See also cases Nos. 470-531-532

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 471

THE UNITED STATES OF AMERICA, RECONSTRUCTION FINANCE CORPORATION, ET AL., PETITIONERS

vs.

BANKERS TRUST COMPANY AND WILLIAM H. BIXBY, TRUSTEES

No. 472

THE UNITED STATES OF AMERICA, RECONSTRUCTION FINANCE CORPORATION, ET AL., PETITIONERS

vs.

BANKERS TRUST COMPANY AND WILLIAM H. BIXBY, TRUSTEES

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 17, 1934
CERTIORARI GRANTED NOVEMBER 5, 1934

United States Circuit Court of Appeals

EIGHTH CIRCUIT.

No. 10,071

IN BANKRUPTCY.

BANKERS TRUST COMPANY, ET AL., APPELLANTS,
vs.
RECONSTRUCTION FINANCE CORPORATION, A CORPORATION, ET AL., APPELLEES.

No. 10,116

IN BANKRUPTCY.

BANKERS TRUST COMPANY, ET AL., APPELLANTS,
vs.
RECONSTRUCTION FINANCE CORPORATION, A CORPORATION, ET AL., APPELLEES.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED SEPTEMBER 26, 1934.

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1 (Citation on Appeal Allowed by United States District Court and Service.)

The United States of America.

To Reconstruction Finance Corporation, a Corporation, United States of America, Angus McLean, Esq., Assistant Solicitor General, Guaranty Trust Company of New York, and Benjamin F. Edwards, Trustees Under First and Refunding Mortgage of Missouri Pacific Railroad Company, and Guy A. Thompson and L. W. Baldwin, Trustees in Reorganization of Missouri Pacific Railroad Company—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals, Eighth Circuit, at St. Louis, Missouri, forty days from and after the day this Citation bears date, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, wherein Bankers Trust Company and William H. Bixby, Trustees of the St. Louis, Iron Mountain & Southern Railway Company River & Gulf Divisions First Mortgage, due May 1, 1933, complaining of a decree entered by this Court on July 6, 1934, entitled "On Petition of Trustees of Debtor and Others to Construe the Gold Clause in Bonds pleaded by Bankers Trust Company, special intervener", under St. Louis, Iron Mountain & Southern Railway Company River & Gulf Divisions First Mortgage, are appellants in error, and you are appellees to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Charles B. Faris, Judge of the District Courts of the United States for the Eastern District of Missouri, this 28th day of July, in the year of our Lord one thousand nine hundred and thirty-four.

C. B. FARIS,
United States District Judge,
For the Eastern District of Missouri.

No. 6935. United States District Court, Eastern Division of the Eastern Judicial District of Missouri. In the Matter of Missouri Pacific Railroad Company, Debtor. Citation. Filed Aug. 2, 1934. Jas. J. O'Connor, Clerk.

2 Received a copy of the attached Citation this 2nd day of August, 1934.

RECONSTRUCTION FINANCE CORPORATION, a Corporation,

STANLEY REED, Gen. Counsel,
By C. M. Clay, Counsel.

MAX O'RELL TRUITT,
GREEN, HENRY & REMMERS,
Attorneys for the Reconstruction Finance Corporation.

UNITED STATES OF AMERICA,
HARRY C. BLANTON,
U. S. Atty. Eastern Dist. Mo.,
By Irwin Sale, Asst. U. S. Atty.
Attorneys for the United States of America.

GUARANTY TRUST COMPANY OF NEW YORK and
BENJAMIN F. EDWARDS,
Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company,
By Nagel, Kirby, Orrick & Shepley,
Attorneys for Guaranty Trust Company of New York and Benjamin F. Edwards, Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company.

L. W. BALDWIN and
GUY A. THOMPSON,
Trustees in Reorganization of the Missouri Pacific Railroad Company,
By Edw. J. White, Attorney for L. W. Baldwin and Guy A. Thompson, Trustees in Reorganization of the Missouri Pacific Railroad Co.

Endorsed: Filed in U. S. District Court on Aug. 2, 1934.

4 (Petition of Missouri Pacific Railroad Company Stating That It Is Unable To Meet Its Debts, etc.)

In the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri.

In the Matter of Missouri Pacific Railroad Company, Debtor. No. 6935.

To the Honorable the Judges of the District Court of the United States for the Eastern Division, Eastern Judicial District of Missouri:

The petition of Missouri Pacific Railroad Company, a railroad corporation, organized and existing under the laws of the State of Missouri, hereinafter referred to as the Debtor, respectfully represents:

First: That the Debtor is a railroad corporation duly organized and existing under the laws of the State of Missouri, and a citizen and resident of said State; and is a com-
5 mon carrier by railroad engaged in the transportation of persons and property in interstate commerce in the States of Missouri, Arkansas, Colorado, Illinois, Kansas, Louisiana and Oklahoma, and is not a street, suburban or interurban electric railway; that during the six months' period immediately preceding the filing of this petition the Debtor has had, and now has, its principal operating office in the City of St. Louis, Missouri, in the Eastern Division, Eastern Judicial District of Missouri.

Second: That there will become due on April 1, 1933 and within thirty days thereafter, the following:

Interest on obligations of the Debtor, due April 1, 1933, aggregating.....	$1,110,411.92
Taxes on property of the Debtor which will become subject to a penalty if not paid by April 10, 1933 (approximately)	1,295,000.00
Principal of, and interest on, obligations of the Debtor, or obligations which constitute a lien upon its property due April 30/May 1, 1933	38,183,918.86
Total	$40,589,330.78

That the Debtor is without funds to pay and discharge the aforesaid obligations as they mature, and on information and belief alleges that it has no means of borrowing or otherwise procuring such funds; that it is unable to meet its debts as

they mature, and desires to effect a plan of reorganization, pursuant to Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy.

6 Third: That a copy of this petition is this day being filed with the Interstate Commerce Commission.

Fourth: That the filing of this petition was duly authorized by the Debtor by resolution of the Executive Committee of the Board of Directors of the Debtor, adopted at a meeting thereof duly held on the 31st day of March, 1933.

Wherefore, your petitioner prays that an order may be entered approving this petition as properly filed under said Section 77, and that it be granted all other and further relief to which it may be entitled.

MISSOURI PACIFIC RAILROAD COMPANY,
By L. W. Baldwin, President.

Herbert Fitzpatrick,
John P. Murphy,
Paul J. Bickel,
Edw. J. White,
Attorneys for Debtor,
13th & Olive Sts.,
St. Louis, Missouri.

United States of America,
Eastern Judicial District of Missouri,
City of St. Louis, Missouri—ss.

L. W. Baldwin, being duly sworn, deposes and says that he is an officer, to-wit, the President, of Missouri Pacific Railroad Company, a corporation, the petitioning Debtor mentioned and described in the foregoing petition; that he
7 has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes them to be true.

L. W. BALDWIN.

Subscribed and sworn to before me this 31st day of March, 1933.

GEO. W. COLLINS,
Notary Public.

(Notarial Seal)

My commission expires June 27, 1933.

Filed March 31st, 1933. Jas. J. O'Connor, Clerk.

8 (Order of District Court Approving Petition of Missouri Pacific Railroad Company as Properly Filed Under Section 77 of Chapter VIII of Acts of Congress Relating to Bankruptcy.)

Upon due consideration of the petition of Missouri Pacific Railroad Company, the above named Debtor, verified March 31, 1933, and filed herein this day, stating that such Debtor is unable to meet its debts as they mature and that it desires to effect a plan of reorganization in accordance with Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, and the Court being satisfied that such petition complies with said Section and has been filed in good faith, it is Ordered:

(1) That said petition be, and it hereby is, approved as properly filed under Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy.

9 (2) That the Debtor be, and it hereby is, authorized and directed, pending further order of this Court in the premises, to run, manage, maintain, operate and keep in proper condition and repair the railroads and property of the Debtor, wherever situated, whether in this state, judicial circuit, or elsewhere, and to manage and conduct its business as a railroad company, and to this end to exercise its authority and franchises and discharge all public duties obligatory upon it, and to employ and discharge and fix the compensation of all officers, attorneys, managers, superintendents, agents and employees, to collect and receive the income, rents, revenues, tolls, issues and profits of said property, to collect all outstanding accounts and all dividends and interest on securities belonging to it, to make such advances to its subsidiary corporations as are necessary to protect the Debtor's interest therein, in the same manner that it would be entitled and bound to do in its own right, and to the extent necessary to protect and preserve the property of the Debtor to make and pay for additions and betterments to the railroads and property of the Debtor, all according to law, and subject to such supervision and control by the Court as the Court may exercise by further orders entered herein. The Debtor is authorized in its discretion from time to time until further order of this Court out of funds now or hereafter coming into its hands to pay:

(a) All taxes and assessments due or to become due upon the property of the Debtor.

(b) All necessary expenses of operating the railroads and conducting the business of the Debtor, including among other

expenses the wages, salaries and compensation of all
10 officers, attorneys, counsel, managers, superintendents,
agents or employees retained by the Debtor, ticket, traffic, car mileage and car per diem balances, interline accounts, freight and overcharge claims and amounts for car and equipment repairs as may become due to connecting or other railroad companies or other common carriers, including all sums now due or which may hereafter become due to other persons or corporations for the occupation or use, jointly or otherwise, of buildings, depots, terminals, tracks, side tracks, yards, warehouses, shops, bridges and other railroad facilities, and such sums as may be necessary to comply with the obligations of the Debtor under contracts by virtue of which said occupation or use may now or hereafter be enjoyed (but such payments shall not constitute affirmations of said contracts, or of any of them);

(c) The following claims incurred by the Debtor within six months preceding the date of this order, to-wit: Wages, salaries, fees and other charges due and payable for services rendered to the Debtor in the usual and customary operation of its properties and the conduct of its current business, unpaid material and supply accounts incurred in the operation of said properties, unpaid and outstanding pay checks and wage checks representing labor actually performed for the Debtor, and unpaid ticket, traffic, car mileage and car per diem balances, interline accounts, freight and overcharge claims and amounts for car and equipment repairs incurred by the Debtor;

(d) The cost of maintaining the corporate existence of the Debtor, including the necessary expenses of the preservation of records, and the registration and transfer of
11 its stocks and bonds and trustee's charges under indentures under which securities of the Debtor have been issued.

(3) The Debtor shall close its present books of account as of the close of business on March 31, 1933. The Debtor shall open new books of account as of the opening of business on April 1, 1933, and cause to be kept therein due and proper accounts of the earnings, expenses, receipts and disbursements of the Debtor, and shall preserve proper vouchers for all payments made on account thereof, and shall deposit the moneys coming into its hands in such of the banks in which funds of the Debtor are presently deposited as shall be selected by the Debtor, or in such other bank or banks as shall be selected by and approved by this Court.

(4) Within forty days after the entry of this order, the Debtor shall file with the Clerk of this Court a statement of the Assets and Liabilities of the Debtor as of the close of business on March 31, 1933, and on or before the last business day of each calendar month thereafter shall file with said Clerk a statement of the assets and Liabilities of the Debtor as of the close of business on the last day of the preceding month together with a summary statement of the revenues and expenses of the Debtor of the preceding calendar month. All such statements shall be certified as correct by the chief accounting officer of the Debtor.

(5) This Court reserves full right and jurisdiction to make from time to time such orders as the Court shall deem proper, appointing a trustee or trustees of all of said
12 Debtor's property and estate, with all the title and powers of such trustee or trustees under and subject to the provisions of the Acts of Congress relating to bankruptcy, including the power to operate the business of said Debtor, fixing the time within which any plan of reorganization shall be proposed, accepted and confirmed, requiring the Debtor to file such schedule and submit such information as may be necessary to disclose the conduct of the Debtor's affairs and the fairness of any proposed plan, fixing a reasonable time within which claims and interests of creditors and stockholders may be filed or evidenced and allowed, and the division of creditors and stockholders into classes according to the nature of their respective claims and interests, and in general such orders amplifying, extending, limiting or otherwise modifying this order as to the Court may at any time seem proper.

C. B. FARIS,
District Judge.

Dated March 31, 1933.

Filed March 31st, 1933. Jas. J. O'Connor, Clerk.

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16 Petition of Debtor for Advice Regarding Payment of Interest, Due May 1, 1933, on the River & Gulf Division First Mortgage Bonds of St. Louis, Iron Mountain & Southern Railway Company.

Comes now the Debtor in the above-entitled cause and respectfully presents to the Court:

First. That, on the 1st day of May, 1903, the St. Louis, Iron Mountain & Southern Railway Company made, executed and delivered to the Mercantile Trust Company of New

York (Bankers' Trust Company, successor,) and
17 William K. Bixby (Benjamin F. Edwards, successor,) as Trustees, its River & Gulf Division First Mortgage, to secure the payment of an authorized issue of $50,000,000.00 First Mortgage Bonds of said Railway Company, with interest thereon at the rate of four per cent per annum, payable semi-annually, on the first day of May and November of each year, said bonds to mature on the first day of May, 1933; that there are now issued and outstanding in the hands of the public, under said River & Gulf Division First Mortgage, bonds aggregating $34,548,000.00 face value.

That, on March 1, 1917, the Debtor herein purchased all of the property upon which said River & Gulf Division First Mortgage is now a first lien, under the final decree and order of this Court, approving the sale to the petitioner, in the receivership proceeding of the Union Trust Company of New York and Benjamin F. Edwards, Trustees, vs. St. Louis, Iron Mountain & Southern Railway Company, Defendant, Case No. 4485, which property, now forming a part of the Debtor's system of railroad, was sold and purchased, subject to the lien of [said mortgage].

That said mortgage is a first lien upon the following parts of Debtor's system of railroads:

Des Peres Bridge Junction, Mo., to Top of Incline, Mo.	.54
Top of Incline, Ill., to Dupo Junction, Ill.	4.12
Vulcan, Ill., to Southern Connection, Ill.	2.32
Valley Junction, Ill., to Thebes, Ill.	119.33
Connection at Chester, Ill., to Chester & Mt. Vernon H. B. No. 6	.04
Main Line Connection, Ill., to Chester & Mt. Vernon Connection, Ill.	.26
18 M. H. & L. Connection, near New Latour, Ark., to M. H. & L. Connection, near McGehee, Ark.	81.80
Halley, Ark., to Clayton Junction, La.	140.61
Gorham, Ill., to Benton, Ill.	40.58
Bush, Ill., to East Carterville, Ill.	10.48
East Carterville, Ill., to Marion, West Conn., Ill.	5.82
East Carterville, Ill., to End of Track, near Hafer, Ill.	2.33
Marion Jct., Ill., to End of Track.	.17
End of Track, near Herrin, Ill., to H. B. Herrin Extension, Ill.	.34
Marion, Ill., to Johnston City, Ill.	8.93
Connections at Herrin, Johnston City & Carterville, Ill.	2.16

Herrin Branch Connection, Ill., to M. & J. C. Connection, Ill.	4.81
Thebes Bridge Connection, Ill., to Thebes, Ill.	1.32
Connections at Thebes, Ill.	.11
Eudora, Ark., to Epps, La.	37.61
Cushman Branch Connection, Ark., to Carthage, Mo.	239.40
Crane, Mo., to Springfield, Mo.	35.28
C. R. I. & P. Connection, near Bridge Junction, Ark., to Marianna, Ark.	43.11
Total	781.47

That payment of said First Mortgage Bonds is also secured by first lien upon the following equipment:

29 Locomotives,
454 Gondola Cars,
22 Box Cars,
182 Coal Cars,
1 Flat Car,
19 1 Work Car,
4 Passenger Cars,
8 Electric Cars and
18 Ballast Cars and
Towboat Lockwood.

That payment of said First Mortgage bonds is also secured by deposit with said mortgage trustees of the following pledged securities:

	Par Value
853 Bonds, First Mortgage, Union Railway Company (of Memphis)	$1,000,000.00
1 Bond, First Mortgage, Western Coal & Mining Company	$1,000,000.00

That the present value of said 781.47 miles of railroad, together with the mortgaged equipment and securities before mentioned, is largely in excess of the face value of bonds now issued and outstanding under said mortgage.

Second. That both the principal and interest on said bonds mature May 1, 1933, the principal of said bonds being in the said sum of $34,548,000.00 and the interest thereon in the sum of $690,960.00.

That, under the terms and conditions of said mortgage, upon default, all the remedies set forth in said mortgage inure to the benefit of the Trustees thereof, among which is the option to said Trustees to sell said railroad and other mort-

gaged property at public auction to the highest bidder, or said Trustees may proceed to foreclose said mortgage, said sale to be made after advertisement as provided in said mortgage, or deed of trust, and, upon the completion of
20 said sale, to execute and deliver to the purchaser or purchasers deed or deeds of conveyance, conveying all of the mortgaged property aforesaid, subject to the lien of said mortgage.

Third. That, as your petitioner is informed and believes, the property subject to said mortgage is worth an amount largely in excess of the total principal and interest due upon said bonds.

That the Debtor is unable to pay the principal amount due upon said bonds, but has funds sufficient to pay the last interest coupon due thereon, maturing May 1, 1933.

That, if said mortgaged railroad and other property shall be sold by the Trustees, as provided in said mortgage they may do, the railroad system of the Debtor would be irrevocably injured in having that portion of its system, covered by said mortgage, dismembered and conveyed, with the result that a large part of the security for the payment of the Debtor's First and Refunding Mortgage Bonds, to meet senior liens upon said property, would be lost to the holders thereof.

Wherefore, the Debtor represents to the Court that, in order to prevent a sacrifice of said mortgaged railroad and other property of the Debtor Railroad Company and the loss of its equity in said property and the loss thereof to its creditors, your petitioner believes that it should be authorized to pay, out of the funds coming into its hands said amount of $690,960.00, interest upon said River & Gulf Division
21 First Mortgage Bonds of the Debtor, which will be due and payable on May 1, 1933, as hereinbefore stated.

MISSOURI PACIFIC RAILROAD COMPANY,
By L. W. Baldwin, President.

Paul J. Bickel,
Thos. T. Railey,
Edw. J. White,
Attorneys for Debtor,
13th and Olive Sts.,
St. Louis, Mo.

United States of America,
Eastern Judicial District of Missouri,
City of St. Louis, Missouri—ss.

L. W. Baldwin, being duly sworn, on his oath states that he is the President of the Missouri Pacific Railroad Company, that he has read the foregoing petition and that the facts therein set forth are true, as affiant verily believes.

L. W. BALDWIN.

Subscribed and Sworn to before me this 1st day of May, 1933.

My commission expires June 27th, 1933.

(Seal) GEO. W. COLLINS,
Notary Public.

Filed May 4, 1933. Jas. J. O'Connor, Clerk.

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24 Order Authorizing Payment of Interest, Due May 1, 1933, on the Debtor's River & Gulf Division First Mortgage Bonds, Said Interest Payment Aggregating the Sum of $690,960.00.

Upon reading and considering the petition of the Debtor herein, regarding the $690,960.00, interest, due May 1, 1933, on $34,548,000.00, face value, of the River & Gulf Division First Mortgage Bonds of the Debtor:

It Is Ordered by the Court that the Debtor be, and
25 it is hereby, authorized and instructed to pay, out of funds coming into its hands, the interest falling due, as aforesaid, on May 1, 1933, in the sum of $690.960.00.

C. B. FARIS,
United States District Judge.

Dated this 3rd day of May, 1933.

Filed May 4, 1933. Jas. J. O'Connor, Clerk.

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28 Order Concerning Filing of Claims of Creditors.

Upon due consideration of the oral motion of Missouri Pacific Railroad Company and all the other Debtors herein, appearing by their counsel, that the Court enter an order determining a reasonable time within which claims and interests of certain classes of creditors of the Debtors, respectively, may be filed or evidenced, and after which no such claims or interest may participate in any plan of re-

organization except upon order for cause shown, and determining the manner in which such claims and interests
29 may be filed or evidenced, and it appearing that said motion should be granted, it is Ordered:

(1) That the following classes of claims described in subdivisions (a) to (d), inclusive, of this paragraph are excluded from the scope of this order and will hereafter be provided for by other appropriate orders, to-wit:

(a) Claims evidenced by bonds, funded obligations, or equipment trust certificates, issued under or secured by deeds of trust, trust indentures, mortgages, equipment trust agreements, or pledges of collateral, including any claims of the respective Trustees thereunder.

(b) Claims of Reconstruction Finance Corporation and of The Railroad Credit Corporation for money borrowed.

(c) Claims on behalf of other carriers or private car owners arising out of rate divisions, interline settlements, per diem accounts, bills for car rentals or mileage made by private cars, car repair bills, switching reclaims, apportionment of reparation awards and of freight earned respecting shipments with transit and storage privileges, and other adjustments of like character between carriers in the conduct of their joint business.

(d) Claims pending before Special Master George C. Hitchcock in the former Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company receivership proceedings.

(2) That the provisions of this order, except as hereinabove otherwise specified, shall apply to: (a) all claims against the Missouri Pacific Railroad Company, New Orleans, Texas & Mexico Railway Company, and Inter-
30 national-Great Northern Railroad Company, Debtors, or their property, accruing prior to April 1, 1933; and to (b) all claims against Missouri Pacific Railroad Corporation in Nebraska; The Beaumont, Sour Lake & Western Railway Company; The St. Louis, Brownsville and Mexico Railway Company; San Antonio, Uvalde & Gulf Railroad Company, and Houston North Shore Railway Company, Debtors, or their property, accruing prior to May 2, 1933, including, without derogation from the generality hereof, claims for personal injuries or death, damage to property, freight claims, overcharge claims, reparation awards, workmen's compensation claims, contingent claims, and other claims of all kinds whatsoever, and whether based on con-

tract, tort, penalties, statutes, or otherwise, and whether liquidated or unliquidated, and whether in suit or reduced to judgment, or otherwise, and also claims heretofore or hereafter arising out of the disaffirmance by any Debtor of any contract. Interest shall be figured and allowed to the respective dates above specified applicable to the respective Debtors, without prejudice to claim for allowance or readjustment of interest subsequent thereto.

(3) That claims against any of the Debtors may be filed with A. T. Cole, Assistant Secretary of Missouri Pacific Railroad Company, Debtor, thirteenth floor, Missouri Pacific Building, Thirteenth and Olive streets, in the City of St. Louis, Missouri, who is hereby directed immediately to stamp the date of receipt thereon and thereafter, upon appointment of a Special Master herein, to transmit the original claims to him. Each claim so filed with him must be accompanied by a copy thereof for use of the Debtor
31 and must be filed not later than August 31, 1933, except that claims arising out of the Debtor's disaffirmance of a contract after July 31, 1933, may be filed within thirty days after notice of such disaffirmance is given. Each claim shall set forth the name of the Debtor against which the claim is asserted, the name and address of the claimant, the nature of the claim, dates of accrual and the amounts of the various items, with such details as shall definitely advise the Debtor of the particulars thereof, and distinguish the claim from other claims of like nature, and shall state whether suit is pending on such claim, and if so, the name of the court in which pending, also whether judgment has been recovered thereon, and shall describe any security for such claim, partial payments, offsets or counterclaims due the Debtor, and if any lien, priority, or preferential classification is claimed, the facts respecting same shall be fully stated. The Master hereafter to be appointed may, in his discretion, in any instance require any such claims to be made more specific or to be accompanied by bill of particulars. Claims shall be verified by persons having knowledge of the facts.

(4) That claims now or hereafter pending in any court or tribunal of competent jurisdiction shall be filed in this proceeding as required by subdivision (3) of this order and within the time therein designated, but except as otherwise herein provided, may be liquidated in the jurisdiction where pending, subject to right of removal or appeal and subject to any stay orders entered in this proceeding.

The following suits now pending or hereafter filed in
32 other jurisdictions are without further order hereby stayed:

(a) Suits begun in other courts subsequent to the time fixed by this order for the filing of claims herein, on claims not timely filed in this proceeding.

(b) Suits, not yet reduced to judgment, pending or hereafter filed in courts respecting whose orders or judgments the giving of an appeal bond is a mandatory or jurisdictional prerequisite to an appeal or review.

(5) That objections by the respective Debtors, or other persons having an interest therein, to the allowance of any claims shall be filed within such time and with such particularity as the Master in his discretion may prescribe.

(6) That hearings on claims against such of the Debtors as are operating lines in the State of Texas shall be held at Houston, Texas, and on claims against the other Debtors shall be held at St. Louis, Missouri, unless otherwise agreed to by the parties or ordered by the Court or by the Master in the interest of economy and justice.

(7) That the period herein provided for the filing of claims to which this order is applicable is hereby determined to be a reasonable time for such purpose, and any such claims not filed within the time fixed by this order shall not participate in any plan of reorganization except upon further order of this Court for cause shown.

(8) That a copy of this order shall be promptly published by the Debtors, once during each week for two
33 consecutive weeks, in some publication in which bankruptcy notices are customarily published, in the cities of St. Louis and Kansas City, Missouri; Omaha, Nebraska; Little Rock, Arkansas; New Orleans, Louisiana, and Houston, Dallas and San Antonio, Texas. The Debtors shall also mail one copy of this order to at least one newspaper, if any, published in each county seat through which the lines of the Debtors are operated. Copy of this notice shall likewise be sent or given to the plaintiff or attorney of record in each of the suits now pending against any of the Debtors in other courts.

(9) That the Court further reserves jurisdiction to amplify, extend, limit, abrogate or otherwise modify this order, as the Court may deem proper. Nothing herein contained

shall prevent the Debtors from continuing to adjust or liquidate claims pursuant to authority granted by the Court.

C. B. FARIS,
District Judge.

Dated May 13th, 1933.

Filed May 15, 1933. Jas. J. O'Connor, Clerk.

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36 (Motion of Reconstruction Finance Corporation for Appointment of Trustees.)

To the Honorable, the Judges of the District Court of the United States for the Eastern Division, Eastern Judicial District of Missouri:

Comes now the Reconstruction Finance Corporation, a corporation, and moves the Court for the appointment of a Trustee or Trustees, and as grounds for said motion represents:

I.

(1) That it is a corporation organized and existing pursuant to Acts of Congress (Title 15, U. S. C. A., Chapter XIV.).

37 (2) That on the following dates your petitioner loaned Debtor, and the Debtor duly executed promissory notes in amounts as follows: (a) March 31, 1932, $2,950,000.00 (b) April 8, 1932, $805,000.00 (c) April 29, 1932, $3,195,000.00 (d) October 1, 1932, $10,150,000.00 (e) February 1, 1933, $3,000,000.00 (f) March 1, 1933, $3,034,800.00, that all of said loans were secured by collateral, that all of said notes are all in default both as to principal and interest; all of said notes bear interest at the rate of six per centum (6%) per annum.

(3) That the amount due your Petitioner by reason of said loans is $23,134,800.00 with interest to date; that by reason of the aforesaid your Petitioner is a creditor of the Debtor.

(4) Your Petitioner states to this Honorable Court upon information and belief that during 1929 and 1930, Messrs. O. P. and M. J. Van Sweringen acquired, through their various companies and particularly Alleghany Corporation, shares of stock of Debtor, that on December 21, 1929, said O. P. and M. J. Van Sweringen, through Alleghany Corporation, owned approximately 482,000 shares of the common and 192,300 shares of the Preferred Stock; that said stock

holdings were from time to time increased, and on April 30, 1930, the Van Sweringen interests, through Alleghany Corporation, owned approximately 547,800 shares of the Common, and 233,500 shares of the Preferred stock of Debtor, and that by reason of said stock ownership and control the said Van Sweringen interests were able to and did elect the Board of Directors and control and manage the affairs of the Debtor through their nominee, Alleghany Corporation.

38 Your petitioner shows to the Court that subsequently O. P. Van Sweringen was elected Chairman of the Board of Directors of Debtor and is now Chairman of the Board of Directors, and since acquiring control, as aforesaid, has been actively engaged in the management, has dominated control and directed the policies of Debtor, and its properties.

(5) That Alleghany Corporation is a Maryland corporation, that its charter was issued early in 1929, that among the first Board of Directors was John P. Murphy and Henry A. Marting (referred to hereinafter); subsequently, at a special meeting of the Board of Directors of said Alleghany Corporation, O. P. Van Sweringen was elected President and M. J. Van Sweringen was elected Vice-President, and John P. Murphy was elected Secretary. Your petitioner alleges, on information and belief, that said persons retained their respective offices throughout the year of 1929 and subsequent years.

(6) Your petitioner shows that in the fall of 1929, shortly before the stock market decline, and on or about the 16th day of October, Alleghany Corporation, through its nominee, Geneva Corporation, purchased certain properties situated in North Kansas City, Missouri, and St. Joseph, Missouri; that said properties so acquired are listed in Exhibits "A", "B", "C", and "D" referred to in Paragraph 7 hereof.

Your petitioner states, on information and belief, that the properties were obtained in substantially the following manner, and that the items of purchase were carried on the books of Alleghany Corporation as follows, to-wit: contract
39 of purchase between Geneva Corporation, nominee of Alleghany Corporation and Swift Family Realty Trust and Armour Company of Delaware, jointly, stated aggregate consideration for the North Kansas City properties to be $13,000,000.00, of which amount $5,200,000.00 was recorded as having been paid on November 1, 1929; the balance of $7,800,000.00 to be due October 16, 1930. That said

contract of purchase between Union Terminal Trust and Union Terminal Railway Company, and Geneva Corporation, acting as nominee of Alleghany Corporation, stated the aggregate consideration for the St. Joseph, Missouri, properties to be $4,600,000.00, of which consideration $2,300,000.00 was recorded as having been paid on December 31, 1929, the balance of $2,300,000.00 to be due on October 16, 1930. Your petitioner states that it is not advised as to either the manner or method, except as contained in Exhibit "C", attached hereto, which states the consideration to be $1,579,514.00, employed by Alleghany Corporation in acquiring the outstanding capital stock of the St. Joseph Belt Railway, aforesaid, but states upon information and belief that it was acquired in substantially the same manner as the other properties referred to herein.

Your petitioner states that it has no information whether or not the purchase price set out in the contracts is the actual consideration passing between the parties for said properties, but states, on information and belief that the amounts set forth in said contracts were greatly in excess of the actual consideration and greatly in excess of the reasonable market value of said properties at that time.

(7) Your Petitioner shows the Court that subsequent to the transactions aforesaid, Alleghany Corporation, through its executive officers, Messrs. O. P. and M. J. Van Sweringen, having obtained control of the debtor property and, incidentally, control of the directorate of debtor, decided that the properties aforesaid, acquired and held by Alleghany Corporation, which corporation was at that time the owner of and/or in control of Debtor, should be sold to and purchased by Debtor from Alleghany Corporation. To accomplish this end, Alleghany Corporation, through its executive officers, Messrs. Van Sweringen, organized another corporation under the laws of the State of Delaware, known as Terminal Shares, Inc.; that all the shares of stock issued by Terminal Shares, Inc., are owned by Alleghany Corporation of which O. P. Van Sweringen is President and Chairman of the Board of Directors; that said O. P. Van Sweringen is the same O. P. Van Sweringen who is Chairman of the Board of Directors of Debtor; that H. A. Marting was President of said Terminal Shares, Inc., and John P. Murphy was Secretary. Petitioner states that said H. A. Marting is the same person as Henry A. Marting whose name appears as a member of the first Board of Direc-

tors of Alleghany Corporation. Petitioner states that the names of Henry A. Marting and John P. Murphy frequently appear in connection with those of Messrs. O. P. and M. J. Van Sweringen in the transactions related herein.

(8) Petitioner states that the sale of the aforesaid properties for a total consideration of $20,334,262.00 plus interest at 5½ per cent per annum, having been agreed upon between Alleghany Corporation, of which O. P. Van Sweringen was Chairman of the Executive Committee of the Board
41 of Directors and the Missouri Pacific Railroad (Debtor herein) of which O. P. Van Sweringen was Chairman of the Executive Committee of the Board of Directors, title passed into Terminal Shares, Inc.; and on December 31, 1930, a series of contracts (a general agreement and three specific purchase contracts) were entered into between Terminal Shares, Inc., and Missouri Pacific Railroad (Debtor herein). Petitioner states that said contracts were executed on behalf of Terminal Shares, Inc., by H. A. Marting, as President, and John P. Murphy, as Secretary; that L. W. Baldwin and Wm. Wyer, as President and Secretary, respectively, executed the contracts on behalf of Missouri Pacific Railroad. Petitioner states that both the Buyer (Missouri Pacific Railroad) and Seller (Terminal Shares, Inc.,) were owned and/or controlled by Alleghany Corporation through its executive officers, Messrs. O. P. and M. J. Van Sweringen. These contracts by and between Terminal Shares, Inc., and Debtor are attached hereto and made a part hereof by reference, as Exhibits "A", "B", "C" and "D" and here by reference incorporated herein, as if set out herein in words and figures.

(9) This petitioner states that, on information it now has it is not able to say whether the contracts referred to herein should be repudiated or ratified; that it is an open question whether said contracts should be repudiated or ratified and that the decision is one which should be made by the Trustee or Trustees herein requested. That there should be a Trustee or Trustees appointed, who are wholly disinterested, to investigate the prudency of said contracts and report
42 to this Honorable Court and creditors, of which your petitioner is one, on all matters and things pertaining thereunto. Petitioner states that as a creditor it is entitled to have this transaction thoroughly investigated by persons who have not heretofore been parties to the transaction, and that a Trustee or Trustees are the only persons who can fairly perform this service for creditors, of which your petitioner is one.

II.

For second grounds for the appointment of a Trustee or Trustees, your Petitioner states that it is provided in subdivision (d), Chapter VIII of the amendment to the United States Bankruptcy Laws, Sec. 77, as follows:

"(d) Before creditors and stockholders of the debtor are asked finally to accept any plan of reorganization, the Interstate Commerce Commission shall, after due notice, hold a public hearing at which the debtor shall present its plan of reorganization and at which also, such a plan may be presented by the Trustee or Trustees, or by or on behalf of creditors of the debtor, being not less than 10 per centum in amount of any class of creditors. * * *"

Petitioner states that this Honorable Court ought to appoint a Trustee or Trustees of the Debtor estate to the end that creditors may, if they see fit to do so, present through the Trustee or Trustees, their plan or plans of reorganization, which will take into and give adequate consideration to all classes of creditors.

Wherefore, Petitioner prays this Honorable Court to
43 appoint a Trustee or Trustees of said Debtor, as provided for by Section 77, Chapter VIII of the Acts of Congress amending the U. S. Bankruptcy Law.

MAX O'RELL TRUITT,
Counsel Reconstruction Finance Corporation.

Received copy of above petition this 22 day of May, 1933.

MISSOURI PACIFIC RAILROAD CO.,
By Edw. J. White,
V. P. & G. S.

Filed May 22, 1933. Jas. J. O'Connor, Clerk.

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44 (Petition of Guaranty Trust Company, et al., for leave to Intervene.)

To the Honorable the Judges of the District Court of the United States for the Eastern Division, Eastern Judicial District of Missouri:

The petition of Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees under the First and Re-

funding Mortgage of Missouri Pacific Railroad Company, dated April 2, 1917, respectfully shows as follows:

1. The petitioner, Guaranty Trust Company of New York (hereinafter sometimes called the "Corporate Trustee"), is, and at all of the times wherein it is hereinafter mentioned was, a corporation duly organized and existing under the laws of the State of New York, and a citizen of said State, and a resident and inhabitant of the City, County and
45 State of New York, and of the Southern District of New York, and as such corporation is, and at all of the times wherein it is hereinafter mentioned was, duly authorized and empowered to hold in trust the property conveyed, transferred and assigned to it upon the trusts hereinafter stated, and to execute and perform the trusts reposed in it under and by virtue of the mortgage or deed of trust and supplements thereto hereinafter described and collectively called the First and Refunding Mortgage.

2. The petitioner, Benjamin F. Edwards, is, and at all of the times wherein he is hereinafter mentioned was, a citizen of the State of Missouri, and a resident and inhabitant of the City and County of St. Louis, State of Missouri, and of the Eastern District of Missouri.

3. The debtor, Missouri Pacific Railroad Company (hereinafter called the "Railroad Company"), is a corporation duly organized and existing under the laws of the State of Missouri, and a citizen and resident of said State, and owns or leases and, prior to the filing of its petition in this Court under Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy, as hereinafter shown, operated lines of railroad continuous and connecting and forming a complete railroad system lying within the States of Missouri, Kansas, Colorado, Oklahoma, Arkansas, Louisiana, Nebraska, Tennessee and Illinois, a substantial and material part whereof is within the Eastern District of Missouri, Eastern Division, and its principal operating and general offices
46 are in the City of St. Louis, Missouri, within the Eastern District of Missouri, Eastern Division.

4. On or about May 18, 1917, the Railroad Company, desiring to provide for funding and consolidating the indebtedness secured by mortgages, trusts and liens on certain of the railroads, equipment and property of the Railroad Company and to provide for making additions to, and extensions and betterments of, its railroads and other property and for the purchase of additional equipment and property and, for such and other corporate purposes, to borrow money, in pursuance

of resolutions of its Board of Directors adopted by the affirmative vote of more than two-thirds of the entire Board, and of resolutions of the holders of its entire capital stock outstanding, at meetings duly called and held in accordance with law, and with the by-laws of the Railroad Company, determined to increase its bonded indebtedness by the creation and issue of its bonds, limited, except as otherwise provided in the First and Refunding Mortgage, to an aggregate principal amount at any one time outstanding of Four hundred and fifty million dollars ($450,000,000), to be known as its First and Refunding Mortgage Bonds (hereinafter sometimes called the "First and Refunding Bonds"); such bonds to be issued in series, to bear such date or dates and have such maturity or maturities, to bear interest at such rate or rates not exceeding six per cent. per annum, payable semi-annually or quarterly on such date or dates, as might from time to time be fixed by the Board of Directors and expressed in the bonds respectively; and to be secured by a mortgage or deed of trust on the lines of railroad, property and franchises therein described or embraced thereunder; and in order
47 to secure the payment of the principal and interest of all the First and Refunding Bonds at any time issued and outstanding under the First and Refunding Mortgage according to their tenor and effect and to secure the performance and observance of all the covenants and conditions therein and in the First and Refunding Mortgage contained, and to declare the terms and conditions upon which the First and Refunding Bonds were to be issued and secured thereunder, duly made, and on or about May 18, 1917, executed under its corporate seal and delivered to the petitioners, as Trustees, a mortgage or deed of trust, dated April 2, 1917, and known as its First and Refunding Mortgage, a copy of which is hereto annexed, marked Schedule A and made a part hereof, wherein and whereby the Railroad Company granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred, pledged and set over, subject to the priority of lien of the several mortgages upon separate portions of its lines of railway and other property in the First and Refunding Mortgage mentioned, unto Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees, and unto their successors in the trust and their assigns forever, all and singular the premises, railroads, properties, real or personal, rights, franchises, estates, appurtenances, stocks and bonds described in the granting clauses of the First and Refunding Mortgage, as follows (the Railroad Company therein referred to is the debtor, and the Indenture therein mentioned is the First and Refunding Mortgage and the bonds therein referred to are the First and Refunding Bonds) viz.:

[Description of property covered by the Mortgage not here printed.]

48 5. All the above described premises, railroads, properties, real or personal, rights, franchises, estates, appurtenances, stocks and bonds were in and by the First and Refunding Mortgage granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred, pledged and set over unto the petitioners, Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees, to have and to hold the same unto them, their successor or successors and assigns forever, in trust, for the equal and proportionate benefit and security of all present and future holders of the First and Refunding Bonds and interest obligations issued and to be issued under the First and Refunding Mortgage, and for the enforcement of the payment of the First and Refunding Bonds and obligations when payable, and the performance of and compliance with the covenants and conditions of the First and Refunding Mortgage, without preference, priority or distinction as to lien, or otherwise, of any one bond over any other bond by reason of priority in the issue or negotiation thereof, or otherwise, so that each and every bond secured by the First and Refunding Mortgage should have the same right, lien and privilege thereunder, and, subject to the terms thereof, be equally and proportionately secured thereby, as if all had been made, executed, delivered and negotiated simultaneously with the execution and delivery of the First and Refunding Mortgage, it being intended that the lien and security of the First and Refunding Mortgage should take effect from the day of the execution and delivery thereof, without regard to the time of such actual issue, sale or disposition of First and Refunding Mortgage Bonds, and as though upon said date all of
49 the First and Refunding Mortgage Bonds had been actually issued, sold and delivered to and were in the hands of innocent holders thereof for value.

6. In and by the granting clauses of the First and Refunding Mortgage there were granted, bargained, sold, conveyed and confirmed unto the petitioners as Trustees, among other things, the "tolls, income, rents, revenues, issues and profits" of the mortgaged property.

7. The petitioners, Guaranty Trust Company of New York and Benjamin F. Edwards, duly accepted the trusts created by the First and Refunding Mortgage and united in the execution of the same to evidence such acceptance.

8. The Petitioners are informed and believe and therefore allege that since the date of the execution and delivery

of the First and Refunding Mortgage, the Railroad Company has from time to time acquired certain other property, real and personal, rights and interests (the exact character, description and extent of which are at present unknown to the petitioners), which has become subject to the lien of the First and Refunding Mortgage, and among which property, rights and interests are certain bonds, notes, stocks and other securities specifically set forth and described in Schedule B attached hereto and made a part hereof with the same force and effect as if herein set forth at length, and also the property specifically conveyed to your petitioners, as Trustees, by several supplemental indentures, which said supplemental indentures and property are described in Schedule C (1 to 20 inclusive) hereto attached and made a part hereof with
50 the same force and effect as if herein set forth at length, and that for the proper protection and enforcement of the rights of the Trustees and of the holders of First and Refunding Mortgage bonds and interest obligations, it is necessary for the Railroad Company to account to petitioners in this proceeding for all property, rights and interests owned by the Railroad Company at the date of the execution and delivery of the First and Refunding Mortgage, and for all property, rights and interests subsequently acquired by the Railroad Company, and for certain property released from the lien of said mortgage, and to exhibit in this proceeding a full and true description thereof, in order that the said property, rights and interests or so much thereof as is subject to the lien of the First and Refunding Mortgage, may be so declared and decreed by this Honorable Court.

9. The petitioners are informed and believe and therefore allege that subsequent to the execution and delivery of the First and Refunding Mortgage, the same was duly recorded in each county in which the lines of railroad and other property of the Railroad Company covered by the First and Refunding Mortgage were and are situated or located, and elsewhere as required by law, and that the said supplements to the First and Refunding Mortgage likewise were duly recorded respectively in the counties in which the property covered by each of said supplements were and are situated or located.

10. The First and Refunding Mortgage and the said supplements thereto were and are the proper act and deed of the Railroad Company, and were by it authorized, made
51 and delivered in all respects in conformity with law, and the same were and are valid conveyances for the purposes therein stated and now constitute valid and subsisting liens upon all the property therein mentioned and set

forth and covered by or embraced in or under the First and Refunding Mortgage and supplements thereto, or intended so to be, or which has become subject to the lien of the First and Refunding Mortgage and supplements thereto, and the petitioners are advised and charge that the lien of the First and Refunding Mortgage covers and extends to all of the premises and properties mentioned and described in said supplemental indentures (Schedule C 1-20), or thereby conveyed and transferred, or intended so to be.

11. By Article Two of the First and Refunding Mortgage it is, among other things, provided that the First and Refunding Mortgage Bonds should be executed by the Railroad Company and delivered by it for authentication to the Corporate Trustee, and that thereupon, as provided therein, the Corporate Trustee should authenticate and deliver the same. From time to time the petitioner Guaranty Trust Company of New York, the Corporate Trustee, in conformity with the provisions of the First and Refunding Mortgage has duly authenticated Thirty-Five Million Four Hundred and Fifty-Seven Thousand Dollars ($35,457,000) principal amount of Series A 5% First and Refunding Bonds, Thirteen Million Six Hundred Forty-One Thousand Dollars ($13,641,000) principal amount of Series B 5% First and Refunding Bonds, Nine Million Forty-Four Thousand Dollars ($9,044,000) principal amount of Series C 5% First and Refunding
52 Bonds, Sixty Million Three Hundred Seventy Three Thousand Five Hundred Dollars ($60,373,500) principal amount of Series D 6% First and Refunding Bonds, Thirty Million Seven Hundred One Thousand Five Hundred Dollars ($30,701,500) principal amount of Series E 6% First and Refunding Bonds, One Hundred Fifteen Million One Hundred Twenty One Thousand ($115,121,000) principal amount of Series F 5% First and Refunding Bonds, Forty Four Million Two Hundred Fifty Thousand Dollars ($44,250,000) principal amount of Series G 5% First and Refunding Bonds, Twenty Five Million Dollars ($25,000,000) principal amount of Series H 5% First and Refunding Bonds and One Hundred One Million Two Hundred Thousand Dollars ($101,200,000) principal amount of Series I 5% First and Refunding Bonds, all of which Bonds had been theretofore duly executed by the Railroad Company pursuant to authority of law and due corporate action, and thereupon each and all of said Bonds were duly delivered to the Railroad Company or upon its order pursuant to the terms of said mortgage.

Seventeen Million Six Hundred Sixteen Thousand Five Hundred Dollars ($17,616,500) principal amount of Series A

5% First and Refunding Bonds, Thirteen Million Six Hundred Forty One Thousand Dollars ($13,641,000) principal amount of Series B 5% First and Refunding Bonds, Nine Million Forty Thousand Dollars ($9,040,000) principal amount of Series C 5% First and Refunding Bonds, Sixty Million Three Hundred Seventy Two Thousand Five Hundred Dollars ($60,372,500) principal amount of Series D 6% First and Refunding Bonds and Thirty Million Seven Hundred One Thousand Five Hundred Dollars ($30,701,500) prin-
53 cipal amount of Series E 6% First and Refunding Bonds, Twenty Million One Hundred Twenty One Thousand Dollars ($20,121,000) principal amount of Series F 5% First and Refunding Bonds and Nineteen Million Two Hundred Fifty Thousand Dollars ($19,250,000) principal amount of Series G 5% First and Refunding Bonds have been cancelled in accordance with the provisions of the First and Refunding Mortgage, and as petitioners are informed and believe, Forty Million Dollars ($40,000,000) principal amount of Series I 5% First and Refunding Bonds, a part of the One Hundred One Million Two Hundred Thousand Dollars ($101,200,000) referred to heretofore, in the aggregate are pledged to secure advances from the Reconstruction Finance Corporation and others.

Your petitioners are informed and believe and therefore allege that the balance of all the First and Refunding Bonds which have been issued and which have not heretofore been cancelled is $264,045,500. principal amount, consisting of Bonds of the following Series:

$ 17,840,500.	principal	amount	of	Series	A 5%	First	and	Refunding	Bonds
4,000.	"	"	"	"	C 5%	"	"	"	"
1,000.	"	"	"	"	D 6%	"	"	"	"
95,000,000.	"	"	"	"	F 5%	"	"	"	"
25,000,000	"	"	"	"	G 5%	"	"	"	"
25,000,000	"	"	"	"	H 5%	"	"	"	"
101,200,000	"	"	"	"	I 5%	"	"	"	"

all of which Bonds are lawfully created, valid and existing obligations of the Railroad Company and entitled to the lien and security of the First and Refunding Mortgage, and with the exception of Forty Million Dollars ($40,000,000)
54 principal amount of Series I 5% First and Refunding Bonds pledged to secure advances from the Reconstruction Finance Corporation and others as aforesaid, are in the hands of numerous bona fide holders for value.

12. The First and Refunding Mortgage of the Railroad Company (Schedule A hereto annexed), in and by Article Eight thereof, provides, among other things, as follows (the

Railroad Company therein referred to is the Missouri Pacific Railroad Company and the debtor herein; the Indenture therein referred to is the First and Refunding Mortgage; the bonds and interest obligations therein referred to are the First and Refunding Bonds and coupons respectively; and the Trustees therein referred to are the Trustees under the First and Refunding Mortgage and the petitioners herein):

Section 2. If one or more of the following events herein called the events of default, shall happen, that is to say:

(a) In case default shall be made in the payment of any installment of interest on any of the bonds hereby secured when and as the same shall become payable, as therein and herein expressed, and such default shall continue for a period of three months; or

(b) In case default shall be made in the payment of the principal of any of the bonds hereby secured when and as the same shall become due and payable either by the terms thereof or otherwise as herein provided; or

(c) In case default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Railroad Company in the bonds hereby secured or in this indenture or any indenture supplemental hereto contained, and such default shall continue for a period of three months after written notice specifying such default and requiring the same to be remedied shall have been given to the Railroad Company by the Corporate Trustee, which notice may be given by the Corporate Trustee in its discretion and shall be given on the written request of the holders of five per cent. in amount of the bonds hereby secured at the time outstanding; or

(d) In case an order shall be made for the appointment of a receiver of the Railroad Company or of the trust estate or of any part thereof; or

(e) In case default shall be made in the payment of the interest on any bond or obligation (except bonds of the four issues last described in Article Twelfth of the granting clauses hereof) outstanding and secured by any lien prior to that of this indenture on the trust estate, or any part thereof, or upon property a leasehold interest in which shall be subject to the lien of this indenture, or in case default shall be made in the payment of the interest on any outstanding bond or obligation of or secured by lien upon the property of any company of which ninety per cent. or more of the capital stock shall be pledged or assigned hereunder; and any of

such defaults shall continue for thirty days; or the Railroad Company shall fail, on the maturity, whether by declaration or otherwise, of any such bonds or obligations (except as aforesaid), and on presentation thereof in accordance with
the terms thereof, either to pay said bonds or obliga-
56 tions or to cause said bonds or obligations to be taken
up and delivered to the Trustees to be held under this indenture, or, if so required by the terms of any indenture constituting a prior lien upon any part of the trust estate, to be delivered to the trustee or trustees thereunder, and in such case to be assigned to the Trustees hereunder; or default shall be made in the performance of any covenant contained in any mortgage or deed or other instrument of trust securing any such bond or obligation, or constituting a lien on any part of the trust estate in priority to this indenture or upon property a leasehold interest in which shall be subject to the lien of this indenture; and, by reason of any of such defaults, any right of entry or right of action for the enforcement of the security afforded thereby shall accrue; * * *

then, and in each and every such case, in the discretion of the Corporate Trustee, the Trustees, or either of them, personally or by their agents or attorneys, may enter into and upon all or any part of the railroads, property and premises, lands, rights, interests and franchises hereby conveyed, and each and every part thereof, and may exclude the Railroad Company, its agents and servants, wholly therefrom, and having and holding the same may use, operate, manage and control said railroads and other premises, regulate the tolls for the transportation of passengers and freight thereon, and conduct the business thereof, either personally or by their superintendents, managers, receivers, agents and servants or attorneys, to the best advantage of the holders of the bonds hereby secured; and upon every such entry the Trustees, at the expense of the trust estate, from time to
57 time, either by purchase, repair or construction may
maintain and restore, and may insure and keep insured, the property, buildings, bridges and structures erected or provided for use in connection with said railroads and other premises, and whereof they shall become possessed as aforesaid, in the same manner and to the same extent as is usual with railroad companies, and likewise from time to time, at the expense of the trust estate, may make all necessary or proper repairs, renewals and replacements, and useful alterations, additions, betterments and improvements thereto and thereon, as to them may seem judicious; and, in such case, the Trustees shall have the right to manage the trust estate and to carry on the business and

exercise all rights and powers of the Railroad Company, either in the name of the Railroad Company or otherwise, as the Trustees shall deem best; and they shall be entitled to collect and to receive all tolls, earnings, income, rents, issues and profits of the same and every part thereof; and after deducting the expenses of operating said railroads and other premises, and of conducting the business thereof, and of all repairs, maintenance, renewals, replacements, alterations, additions, betterments and improvements, and all payments which may be made for taxes, assessments, insurance and prior or other proper charges upon the said premises and property or any part thereof, as well as just and reasonable compensation for their services, and for all attorneys, counsel, agents, clerks, servants and other employees by them properly engaged and employed, they shall apply the moneys arising as aforesaid as follows:

(1) In case the principal of none of the bonds hereby secured shall have become due and be unpaid, to the
58 payment of the interest in default, in the order of the maturity of the installments of such interest, with interest thereon at the same rates as are borne by the bonds respectively upon which such interest shall be in default; such payments to be made ratably to the persons entitled thereto, without discrimination or preference; and

(2) In case the principal of any of the bonds hereby secured shall have become due, by declaration or otherwise, and shall be unpaid, first to the payment of the accrued interest (with interest on the overdue installments thereof at the same rates as are borne by the bonds respectively upon which such interest shall be in default) in the order of the maturity of the installments of such interest, and then to the payment of the principal of all bonds hereby secured, whether due or not; such payments to be made ratably to the persons entitled thereto, without discrimination or preference.

These provisions, however, are not intended in any wise to modify the provisions of Section 1 of this Article Eight, but are subject thereto.

* * * * * * * *

Section 5. If one or more of the events of default described in Section 2 of this Article Eight shall happen, and shall be continuing, the Trustees, with or without entry, personally or by attorney, in the discretion of the Corporate Trustee, either

(a) may sell, subject to the then existing prior liens thereon, to the highest bidder, all and singular the trust estate, including bonds and stocks, rights, franchises
59 and interests and appurtenances, and other real and personal property of every kind, and all right, title and interest, claim and demand therein, and right of redemption thereof; which sale or sales shall be made at public auction at such place in the City of St. Louis, in the State of Missouri, or at such other place, and at such time and upon such terms, as the Corporate Trustee may fix and briefly specify in the notice of sale to be given as herein provided; or

(b) may proceed to protect and enforce their rights and the rights of the holders of the bonds secured by this indenture, by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure of this indenture, or for the enforcement of any other appropriate legal or equitable remedy, as the Corporate Trustee, being advised by counsel, shall deem most effectual to protect and enforce any of their rights or duties hereunder.

Upon the written request of the holders of twenty-five per cent. in amount of the bonds hereby secured, in case of any default made and continued as aforesaid, it shall be the duty of the Trustees, upon being indemnified as hereinafter provided, to take all steps needful for the protection and enforcement of their rights and the rights of the holders of the bonds hereby secured, and to exercise the powers of entry or sale herein conferred, or both, or to take appropriate judicial proceedings by action, suit or otherwise, as the Corporate Trustee, being advised by counsel, shall deem
60 most expedient in the interest of the holders of the bonds hereby secured.

In case default shall be made in the payment of the principal or interest of some, but not all, of the bonds outstanding hereunder, then whatever action it is in this Article Eight provided may or shall be taken by or upon the request of the holders of a specified percentage of bonds outstanding, may or shall also be taken by or upon request of the holders of the same percentage of the outstanding bonds of all series upon bonds of which any such default shall have occurred.

* * * * * * * *

Section 17. In case an event of default shall have happened and a bill of equity shall be filed or any other judicial

proceedings commenced to enforce any right of the Trustees or of the bondholders under this indenture, then the Trustees shall be entitled to exercise the right of entry herein conferred, and also any and all other rights and powers herein conferred and provided to be exercised by the Trustees upon the occurrence and continuance of default as hereinbefore provided, and as matter of right the Trustees shall be entitled to the appointment of a receiver of the trust estate and of the earnings, income, revenue, rents, issues or profits thereof, with such powers as the court making such appointment shall confer; provided, however, that notwithstanding the appointment of any such receiver, the Corporate Trustee shall be entitled to retain possession and control of any bonds, cash and other property deposited with the Corporate Trustee hereunder.

Section 18. In case the Railroad Company shall make default in any of the respects mentioned in Section 2 of this Article Eight, and (1) at any time during the continu-
61 ance of such default there shall be any existing judgment against the Railroad Company unsatisfied and unsecured by bond on appeal or (2) in any judicial proceeding by any party other than the Trustees, a receiver shall be appointed of the Railroad Company or of its property, or a judgment or order be entered for the sequestration of its property; or if, in case of default in payment of interest specified in subdivisions (a) and (c) of said Section 2, the Railroad Company shall admit to the Trustees its inability to make good such default within the period of grace in said subdivisions mentioned; the Trustees, without waiting the period of grace, if any, in said section specified in respect of such default, shall thereupon be entitled, in the discretion of the Corporate Trustee, forthwith to exercise the right of entry herein conferred, and also any and all other rights and powers herein conferred and provided to be exercised by the Trustees upon the occurrence and continuance of default as hereinbefore provided, and as a matter of right the Trustees shall thereupon be entitled, in the discretion of the Corporate Trustee, to the appointment of a receiver of the trust estate, and of the earnings, income, revenue, rents, issues and profits thereof, with such powers as the court making such appointment shall confer; provided, however, that notwithstanding the appointment of any such receiver, the Corporate Trustee shall be entitled to retain possession and control of any bonds, cash and other property deposited with the Corporate Trustee hereunder and to receive and hold any property or money, and to retain control of any moneys deposited with other depositaries as herein provided.

* * * * * * * *

Section 21. Except as herein expressly provided to the contrary no remedy herein conferred upon, or reserved to, the Trustees, or either of them, or the holders of bonds hereby secured, is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

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13. Your petitioners are informed and believe and therefore allege that heretofore and on or about March 31, 1933, the Railroad Company filed in this Court its petition as debtor under Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy, which petition represented, among other things, that the petitioner was duly organized and existing under the laws of the State of Missouri, and a common carrier by railroad engaged in the transportation of persons and property in interstate commerce, in the States of Missouri, Arkansas, Colorado, Illinois, Kansas, Louisiana and Oklahoma; that there would become due on April 1, 1933, and within thirty days thereafter, certain sums aggregating $40,589,330.78 for principal and interest on its obligations or obligations constituting a lien on its property and for taxes; that the Debtor was without funds to pay and discharge the aforesaid obligations as they matured, and alleged, on information and belief, that it had no means of borrowing or otherwise procuring such funds, and was unable to meet its debts as they matured and desired to effect a plan of reorganization pursuant to Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy; that on the date of the filing of the petition a copy thereof was being filed with the Interstate Commerce Commission, and that the filing of the petition was duly authorized by the Debtor by resolution of the Executive Committee of the Board of Directors of the Debtor, adopted at a meeting thereof duly held on the 31st day of March, 1933. The said petition prayed, among other things, that an order might be entered approving said petition as properly filed under Section 77, and that there might be granted to the Railroad Company all other and further relief to which it might be entitled.

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14. The petitioners are informed and believe and therefore allege, that upon the filing of said petition by the Railroad Company and on or about March 31, 1933, an order was made and entered by this Court, which order, among other things, directed that the petition be approved as properly

filed under Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, and authorized the Railroad Company, pending further order of this Court, among other things, to run, manage, maintain, operate and keep in proper condition and repair the railroads and property of the Railroad Company, wherever situated, whether in Missouri, or the Eighth Judicial Circuit, or elsewhere, and to manage and conduct its business as a railroad company, all according to law and subject to such supervision and control by the Court as the Court might exercise by its further orders entered herein.

15. The petitioners pray leave to refer to the said petition of the Railroad Company, and to the said order entered thereon, or to duly certified copies thereof when the same shall be produced upon the final hearing, or
64 upon any hearing in this proceeding, with the same force and effect as if the said petition and order were herein set forth at length.

16. The petitioners are informed and believe and therefore allege that the Railroad Company, subsequent to the entry of the aforesaid order by this Court, has operated its lines of railroad, properties and premises of every kind and description, including the properties subject to the lien of the First and Refunding Mortgage and the supplements thereto (other than certain securities in the possession of Guaranty Trust Company of New York, as Corporate Trustee), subject to the supervision and control of this Court pursuant to said order and the further orders entered herein and to the provisions of Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, by reason whereof the petitioners are unable, save as herein sought, to take possession thereof and to administer their trust as in the First and Refunding Mortgage it is provided should be done in the event of a default as herein specified.

17. The petitioners are informed and believe and therefore allege, that events of default under the First and Refunding Mortgage have occurred in that (a) the Railroad Company has failed, on the maturity on May 1, 1933, of the $34,548,000 principal amount of St. Louis, Iron Mountain and Southern Railway Company River and Gulf Divisions First Mortgage Four Per Cent. Thirty Year Gold Bonds secured by its First Mortgage dated May 1, 1903, constituting a lien prior to that of the First and Refunding Mortgage on a part of the property secured by such First and Refunding Mortgage, to pay the same or to cause the same to be

taken up and delivered to your petitioners, as Trus-
65 tees, or to be delivered to the trustee or trustees of any indenture constituting a prior lien, and (b) the Railroad Company has defaulted in the payment of the interest due April 1, 1933, upon all the First Mortgage 4½% Gold Bonds issued and outstanding and secured by the First Mortgage of Pacific Railroad of Missouri (Carondelet Branch), and that such default in the payment of interest has continued for a period of thirty (30) days from April 1, 1933, and such defaults still continue.

18. The petitioners are informed and believe and therefore allege that by reason of the defaults mentioned in the foregoing paragraph 17 they are entitled, under the terms of the First and Refunding Mortgage, to exercise the right of entry therein conferred and to proceed to protect and enforce their rights and the rights of the holders of the First and Refunding Bonds in the manner described in the First and Refunding Mortgage and are entitled to collect and to receive all tolls, earnings, income, rents, issues and profits of the mortgaged premises, and to apply the same as provided in the First and Refunding Mortgage, and generally to exercise any and all rights and powers in and by the First and Refunding Mortgage conferred and provided to be exercised by the Trustees, or either of them, thereunder, upon the occurrence and continuance of any default as in the First and Refunding Mortgage provided.

19. The petitioners are informed and believe and therefore allege that default has been made by the Railroad Company in the payment of the instalment of interest which became due on April 1, 1933, upon all of the Series H
66 5% First and Refunding Bonds issued and outstanding and secured by the First and Refunding Mortgage and that such default still continues.

The petitioners are informed and believe and therefore allege that default has likewise been made by the Railroad Company in the payment of the installment of interest which became due on May 1, 1933, upon all of the Series G 5% First and Refunding Bonds issued and outstanding and secured by the First and Refunding Mortgage and that such default still continues.

20. The petitioners are informed and believe and therefore allege that various mortgages exist upon the properties of the Railroad Company, including the First and Refund-

ing Mortgage as aforesaid; that the liens and provisions of the said mortgages differ among themselves and the aggregate of the outstanding bonds secured by them respectively is very great, amounting to many millions of dollars; that some of said mortgages purport, or may be claimed, to constitute liens upon the property covered by the lien of the First and Refunding Mortgage, or some portions thereof, partly superior and partly inferior to the First and Refunding Mortgage lien, but that the amount and extent of such liens, if any, is unknown to your petitioners.

21. The petitioners are informed and believe and therefore allege, that the income and revenues of the Railroad Company are and will be wholly insufficient to pay and discharge the indebtedness of the Railroad Company now due and owing by it, and that the Railroad Company has
67 insufficient resources with which to provide for the payment of its obligations as they mature.

22. The petitioners are informed and believe and therefore allege that the said railroad property, premises and franchises covered by and embraced in and under the First and Refunding Mortgage and the supplements thereto constitute one single property, consisting of a railroad and its appurtenances, and should be conducted as a single enterprise.

23. No proceedings have been had at law or in equity for the protection and enforcement of the rights of the petitioners as such Trustees, and the rights of the holders of the First and Refunding Bonds or for the foreclosure of the First and Refunding Mortgage or for the collection or enforcement of the said mortgage debt, or any part thereof, save only this proceeding, and that petitioners have no adequate relief at law, and the relief to which they are entitled can only be granted by this Court.

24. The petitioners are informed and believe and therefore allege, that the Railroad Company owns or leases and operates lines of railroad, substantially all continuous and connecting and forming a complete railroad system, lying within the States of Missouri, Kansas, Colorado, Oklahoma, Arkansas, Louisiana, Nebraska, Tennessee and Illinois, aggregating in length of first main track about 7,450.59 miles; the Railroad Company owns and leases certain rolling stock and equipment and owns other property, real and personal, as well as rights, privileges and franchises, appertaining to, or used in connection with, its lines of railroad and
68 business, and certain bonds, stocks and other securities: that pursuant to the order of this court entered

March 31, 1933, the Railroad Company now retains and claims possession of a large amount of rolling stock and equipment and other personal property which is pledged under and covered by the First and Refunding Mortgage, and which, or an interest in which, is claimed by the petitioners as Trustees as aforesaid, which petitioners cannot, without the accounting hereinafter prayed, more particularly and fully describe; that pursuant to the order of this court entered March 31, 1933, said Railroad Company also holds and retains and claims title to certain of the tolls, income, rents, revenues, issues and profits thereof which are also subject to and covered by the petitioners' said mortgage lien, and are likewise claimed by them as Trustees as aforesaid. The petitioners are advised and therefore aver that by reason of the premises and of the matters hereinbefore in this petition alleged, and of the defaults hereinbefore in this petition alleged, as well as by reason of the impairment of and danger and injury to the security of their said mortgage lien hereinbefore alleged, and the further danger to the security of said mortgage lien by reason of the situation in this paragraph shown, the petitioners are entitled to file this petition and to have the relief herein prayed, and to have all such tolls, income, rents, revenues, issues and profits of the Railroad Company and every part thereof segregated and sequestered for the benefit of petitioners as such Trustees and of the holders of the First and Refunding Mortgage Bonds and interest obligations secured by their said mortgage lien; and the petitioners hereby demand that said
69 tolls, income, rents, revenues, issues and profits be so segregated and sequestered as aforesaid, and be applied, subject only to such expenses and other uses as may legally and properly, having due regard to the rights of petitioners and the holders of the First and Refunding Mortgage Bonds, be incurred and made in the operation and preservation of the property, rights and franchises covered by petitioners' said mortgage lien, to and for the benefit of petitioners, as such Trustees, and of the holders of the First and Refunding Mortgage Bonds and interest obligations, and to and for the proper protection of petitioners' said mortgage lien and the security thereof.

25. By reason of the premises the petitioners, as Trustees of the First and Refunding Mortgage, are unable adequately to execute their said trust in the manner specified and provided in and by the First and Refunding Mortgage without the aid and interposition of this Honorable Court, nor can their said trust be executed, as the petitioners are advised and charge, and the rights of all the parties in in-

terest be ascertained and fully protected otherwise than by segregating and sequestering the tolls, income, rents, revenues, issues and profits of the Railroad Company and every part thereof.

Wherefore, the petitioners pray:

1. That the petitioners be permitted to intervene generally in the above entitled proceeding for the purpose of protecting their rights as Trustees under the First and Refunding Mortgage and the rights of the holders of the First
70 and Refunding Bonds issued thereunder, and further and more specifically for the purposes of this petition.

2. That the First and Refunding Mortgage, dated April 2, 1917, and the supplements thereto, executed and delivered to the Trustees therein named, may be decreed to be valid and subsisting liens, upon all of the railroads and property, real and personal, rights, privileges and franchises in the First and Refunding Mortgage and said supplements described or thereby conveyed or transferred or intended so to be, or which have become subject thereto (save and except such property as may have been duly released from the lien thereof), and upon the tolls, income, rents, revenues, issues and profits of the Railroad Company and every part thereof, prior and superior to the interests or liens or claims of the debtor Missouri Pacific Railroad Company.

3. That the nature, extent and character of the said property and premises may be ascertained and determined; that an account be taken of all the railroads and property, real, personal and mixed, which belonged to the Railroad Company at the date of the First and Refunding Mortgage and of all the railroads, property, additions, extensions, improvements, renewals and replacements acquired by the Railroad Company since the date of the First and Refunding Mortgage.

4. That all tolls, income, rents, revenues, issues and profits of the mortgaged property and every part thereof, as shall come into the possession of the Railroad Company or of any trustee or trustees thereof appointed in this
71 proceeding be impounded as of the date of the filing of this petition (without waiver of any claim of petitioners to tolls, income, rents, revenues, issues and profits, accruing prior to the filing of this petition) and segregated and sequestered by or under the direction of this Honorable Court for the benefit of petitioners, as Trustees, and of the holders of the First and Refunding Bonds and interest obligations secured by the said mortgage lien and be applied

to and for their benefit, subject only to such expenses and other uses as may legally and properly be incurred in the operation and preservation of said property, having due regard for the rights of petitioners and holders of the First and Refunding Bonds and for the protection of the security of said mortgage lien, and that the rights of petitioners, as Trustees, and of the holders of the First and Refunding Bonds and interest obligations may be carefully and fully preserved.

5. That the debtor Railroad Company be required to make answer to all and singular the matters hereinbefore stated and charged, but not under oath, answer under oath being hereby expressly waived, and to stand to and abide by and perform such orders, directions or decrees as shall be made herein and as to your Honors shall seem equitable and just.

6. That the petitioners may have such other and further relief in the premises as the nature and circumstances of this proceeding may require and as to this Honorable Court shall seem meet.

72 And the petitioners, as in duty bound, will ever pray.

GUARANTY TRUST COMPANY
OF NEW YORK,
Corporate Trustee,
(Seal) By M. P. Callaway, Vice-President.

Dated June 7, 1933.

Attest:
M. Kuhn,
Asst. Secretary.

BENJAMIN F. EDWARDS,
Individual Trustee.

DAVIS, POLK, WARDWELL,
GARDINER & REED,
15 Broad Street, New York, N. Y., and

NAGEL, KIRBY & SHEPLEY,
918 Security Building,
St. Louis, Missouri,
Solicitors for Petitioners.

Daniel N. Kirby,
Allen C. Orrick,
Edwin S. S. Sunderland,
Leighton H. Coleman,
Of Counsel.

73 United States of America,
State of Missouri,
City of St. Louis—ss.

Merrel P. Callaway, being duly sworn, deposes and says that he is an officer, to-wit: a vice-president of Guaranty Trust Company of New York, one of the petitioners above named; that he has read the foregoing petition and knows the contents thereof; that the allegations contained therein in respect of the acts of the Guaranty Trust Company of New York are true to his own knowledge, and that as to all other allegations contained therein he is credibly informed and believes that the same are true; that the seal affixed to said petition is the corporate seal of the said petitioner and was so affixed by its authority.

MERREL P. CALLAWAY.

Subscribed and sworn to before me this 7th day of June, 1933.

A. ELLA KLOBASA,
Notary Public.

(Seal)

My term ends August 27, 1933.

United States of America,
Eastern District of Missouri,
State of Missouri—ss.

Benjamin F. Edwards, being duly sworn, deposes and says that he is one of the petitioners above named; that he has read the foregoing petition and knows the contents thereof; that the allegations contained therein in respect of the
74 acts of this deponent are true to his own knowledge, and that as to all other allegations contained therein he is credibly informed and believes that the same are true.

BENJAMIN F. EDWARDS.

Subscribed and sworn to before me this 7 day of June, 1933.

A. ELLA KLOBASA,
Notary Public.

(Seal)

My term ends August 27, 1933.

Filed Jun. 7, 1933. Jas. J. O'Connor, Clerk.

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76 (Order Granting Petition of Guaranty Trust Company, et al., for Leave to Intervene, etc.)

This cause coming on further to be heard on this day upon the petition dated June 7th, 1933, of Guaranty Trust Com-

pany of New York and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of Missouri Pacific Railroad Company, dated April 2, 1917, for leave to intervene in this cause, for a segregation of the tolls, income, rents, revenues, issues, and profits of the property subject to
77 the First and Refunding Mortgage, and for other relief, and the Court having heard the arguments of counsel and being fully advised in the premises:

It Is Ordered, Adjudged, and Decreed, as follows:

1. That Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of Missouri Pacific Railroad Company, dated April 2, 1917 (hereinafter called the First and Refunding Mortgage), be and they hereby are permitted to intervene, as such Trustees, in this cause for the purpose of protecting their rights as such Trustees and the rights of the holders of the bonds issued thereunder (hereinafter called the First and Refunding Bonds), and all notices of further proceedings in this cause shall be served upon Messrs. Davis, Polk, Wardwell, Gardiner & Reed, 15 Broad Street, New York, N. Y., and Messrs. Nagel & Kirby, 918 Security Building, St. Louis, Missouri, Solicitors for said Trustees, pursuant to the rules and practice of this Court.

2. That Missouri Pacific Railroad Company, Debtor, may file herein an answer to said petition within 20 days from the date of this order, and that said petition shall thereupon come on to be heard before this Court on the 27th day of June, 1933, at 10 o'clock, in the forenoon, at which time all parties to this proceeding shall be entitled to be heard upon the matters referred to in said petition.

Dated June 7, 1933.

C. B. FARIS,
District Judge.

Filed June 7, 1933. Jas J. O'Connor, Clerk.

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80 (Answer of Missouri Pacific Railroad Company to Motion of Reconstruction Finance Corporation for Appointment of Trustees.)

Now comes Missouri Pacific Railroad Company, Debtor, by its attorneys, and for answer to the motion of Reconstruction Finance Corporation filed herein, in which it asks for the appointment of a trustee or trustees of Debtor's estate, states:

1. The Debtor admits that Reconstruction Finance Corporation is a creditor of the Debtor, with a substantial interest in these proceedings.

2. The Debtor admits the execution by it of the contracts referred to in said motion.

3. The Debtor admits that, at the time of the execu-
81 tion of said contracts, the Alleghany Corporation referred to in said motion was the owner of a majority of the stock of the Debtor and the owner of a majority of the stock of the Terminal Shares, Inc.

4. The Debtor submits that, under the allegations set forth in said motion, there is no sufficient showing to require the appointment of a trustee or trustees, yet the Debtor interposes no objection to such appointment if and when the Court shall deem it necessary or desirable to make the same.

5. Debtor further submits that the question, whether or not the contracts referred to in said motion may and should be repudiated, necessarily requires a detailed inquiry into the facts, and such question should be determined after full hearing before a Special Master appointed by order of this Court, in accordance with the statute in such cases made and provided.

6. The Debtor expressly denies each and every allegation contained in said motion, not herein expressly admitted.

Wherefore, Missouri Pacific Railroad Company, Debtor, prays the judgment of the Court as to whether or not said motion should be granted.

MISSOURI PACIFIC RAILROAD
COMPANY, Debtor,
By Paul J. Bickel,
Thos. T. Railey,
Edw. J. White,
Its Attorneys.

Filed Jun. 22, 1933. Jas. J. O'Connor, Clerk.

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84 Order Appointing Trustees.

It appearing to the Court that it is advisable at this time to appoint Trustees of the estates of all of the Debtors heretofore or hereafter made parties to this proceeding, and it appearing further that the Interstate Commerce Commission has selected and designated a panel of standing trustees, qualified for service as such, pursuant to subdivision (c) of

Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy, which panel contains the names of L. W. Baldwin and Guy A. Thompson, both of St. Louis, Missouri,

It Is Ordered:

1. That the said L. W. Baldwin and Guy A. Thompson be and they are hereby appointed temporarily
85 Trustees of all and singular the railroads, lands, properties, estates, rights and franchises, of whatever character and wherever situated, of Missouri Pacific Railroad Company; New Orleans, Texas & Mexico Railway Company; International-Great Northern Railroad Company; Missouri Pacific Railroad Corporation in Nebraska; The Beaumont, Sour Lake & Western Railway Company; St. Louis, Brownsville & Mexico Railway Company; San Antonio, Uvalde & Gulf Railroad Company; and Houston North Shore Railway Company, Debtors; which appointment, as well as the other provisions of this order, shall be effective as of the beginning of business on July 1, 1933. Such appointment shall also apply to the estates of all Debtors hereafter becoming parties to this proceeding, from and after the respective dates of approval of the petitions of such subsequent Debtors. The said Trustees shall have all of the title, and subject to the control of this Court and consistently with the provisions of Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy shall exercise all of the powers of Trustees appointed pursuant to Section 44 or any other section of the Acts of Congress relating to Bankruptcy.

2. That said Trustees shall have all of the powers, rights and privileges heretofore granted to or conferred upon the respective Debtors, or any of them, pursuant to any and all of the orders heretofore entered by this Court in this proceeding, and each and all of the orders heretofore entered in this proceeding shall, with respect to the Trustees and the property in their possession, be of like force and effect as
86 though said Trustees were therein specifically named in place of said respective Debtors, all of said orders being hereby incorporated in and made a part of this order by reference. The Trustees shall pay out of the funds coming into their hands, as such Trustees, the cost of maintaining the corporate organization of the Debtors, in addition to the necessary expense of preserving their records, registration and transfer of their stocks and bonds, and Trustees' charges under indentures under which securities of the Debtors have been issued.

3. That within ten (10) days from and after July 1, 1933, said Trustees shall each execute and file with the Clerk of

this Court a bond or bonds with one or more sureties approved by the Clerk of this Court, for the benefit of whom it may concern, in the sum of $50,000, conditioned to the effect that they will well and truly perform the duties of their office, and duly account for all moneys and property whatsoever which may come into their hands, and abide by and perform all things which they shall be directed by the Court to do.

4. That the Debtors shall give notice to their creditors and stockholders of a hearing to be held before the undersigned Judge, in the Court Room of the United States District Court, Federal Building, St. Paul, Minnesota, on the 25th day of July, 1933, at eleven o'clock in the forenoon, Central Standard Time, to determine whether such appointment of said Trustees shall be made permanent or shall be terminated, or a substitute Trustee or Trustees or an additional Trustee or Trustees shall be appointed by the Court, by publishing notice of such hearing once a week for two consecutive weeks in one daily newspaper published and of
general circulation in each of the cities of St. Louis
87 and Kansas City, Missouri; Houston, Texas; Omaha,
Nebraska; Little Rock, Arkansas; New Orleans, Louisiana, and New York, New York.

5. That all persons, firms and corporations having in their possession any of the property of the Debtors are hereby ordered to deliver the same to the Trustees, and to make such transfers, assignments and conveyances in connection therewith as may be necessary and proper; and each and every of the officers, directors, agents and employees of the Debtors is hereby required to turn over and deliver to said Trustees, or their duly constituted representatives, any and all books of account, vouchers, papers, deeds, contracts, notes, securities, accounts, moneys or other property in his or their hands, or under his or their control belonging to or in the possession of the Debtors, and to abide by and conform to such orders as may be given from time to time by said Trustees, or their duly constituted representatives, in conducting the operation of the properties of the Debtors and in the discharge of their duties as Trustees.

6. That the Court reserves full right and jurisdiction to make from time to time such additional orders herein as to the Court shall seem proper, as well as any orders amplifying, extending, limiting or otherwise modifying this order,

and in all respects to regulate and control the conduct of said Trustees.

C. B. FARIS,
District Judge.

Dated June 22d, 1933.

Filed June 22, 1933. Jas. J. O'Connor, Clerk.

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88 (Order Relating to Matter of Keeping Books by Missouri Pacific Railroad Company, etc.)

This cause coming on further to be heard on this day upon the petition dated June 7, 1933, of Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of Missouri Pacific Railroad Company, dated April 2, 1917, and upon the answer thereto filed herein of Missouri Pacific Railroad Company, Debtor, and the Court having heard the arguments of counsel and being fully advised in the premises:

89 It Is Ordered, Adjudged and Decreed as follows:

1. That until further order of this Court, Missouri Pacific Railroad Company, Debtor, shall keep its books of account in such manner as to show all tolls, income, rents, revenues, issues and profits derived from the property of said Debtor which is subject to the lien of the First and Refunding Mortgage of said Debtor, dated April 2, 1917, which amount, for the purposes hereof, shall be determined as follows:

From the gross income of the Debtor there shall be deducted the following:

(a) All administrative and operating expenses of the Debtor (including taxes) according to the accounting practice prescribed by the rules and regulations of the Interstate Commerce Commission.

(b) All dividends, interest and other income from securities not pledged under said First and Refunding Mortgage.

(c) All interest payments on the following outstanding securities or other obligations of the Debtor or its predecessors in interest constituting a lien or charge against property owned by the Debtor, to-wit:

First Mortgage Four Per Cent Gold Bonds of Pacific Railroad (of Missouri) (Extended), dated August 1, 1868—$6,996,000 outstanding.

Second Mortgage Five Per Cent Bonds of Pacific Railroad (of Missouri) (Extended), dated July 1, 1871—$2,573,000 outstanding.

First Mortgage Four and One-Half Per Cent Bonds of Pacific Railroad (of Missouri), Carondelet Branch (Extended), dated October 1, 1873—$237,500 outstanding.

90 Third Mortgage Four Per Cent Bonds of Missouri Pacific Railway Company (Extended), dated November 1, 1876,—$3,828,000 outstanding.

First Mortgage Four Per Cent Bonds of Little Rock & Hot Springs Western Railroad Co., dated July 1, 1899—$1,140,000 outstanding.

River and Gulf Divisions, First Mortgage, Four Per Cent Gold Bonds of St. Louis, Iron Mountain & Southern Railway Company, dated May 1, 1903—$34,548,000 outstanding.

Certificates Series A issued by Guaranty Trust Company of New York, Trustee under Texarkana Union Station Trust, interest rate five per cent, dated December 1, 1927—$1,500,000 outstanding, on which Missouri Pacific Railroad Company's primary liability is $450,000.

Equipment Gold Notes Series 41 of Missouri Pacific Railroad Company, interest rate six per cent, dated January 15, 1920—$1,386,800 outstanding.

Equipment Trust Certificates, Series A, of Missouri Pacific Railroad Company, interest rate six and one-half per cent, dated February 1, 1921—$459,000 outstanding.

Equipment Trust Certificates, Series B, of Missouri Pacific Railroad Company, interest rate five and one-half per cent, dated November 1, 1923—$1,596,000 outstanding.

Equipment Trust Certificates, Series C, of Missouri Pacific Railroad Company, interest rate five per cent, dated November 1, 1924—$1,820,000 outstanding.

Equipment Trust Certificates, Series D, of Missouri Pacific Railroad Company, interest rate five per cent, dated March 1, 1925—$4,116,000 outstanding.

91 Equipment Trust Certificates, Series E, of Missouri Pacific Railroad Company, interest rate four and one-half per cent, dated December 1, 1925—$2,576,000 outstanding.

Equipment Trust Certificates, Series F, of Missouri Pacific Railroad Company, interest rate four and one-half per cent, dated May 1, 1929—$7,140,000 outstanding.

Real Estate Security Mortgage Five Per Cent Bonds of Pacific Railroad (of Missouri), dated May 1, 1872—$799,000 outstanding.

Plaza-Olive Building First Mortgage Six Per Cent Gold Bonds, dated October 1, 1928—$809,000 outstanding.

Central Branch, Union Pacific Railway Company First Mortgage Four Per Cent Bonds, dated June 30, 1898—$1,628,000 outstanding.

2. This order shall take effect as of July 1, 1933.

3. The Court reserves for further adjudication all questions as to the marshaling of liens of all parties in interest in and to the property and income of said Debtor.

4. That all the provisions of this Order relative to Debtor shall apply to and bind any trustee or trustees thereof appointed by this Court in this proceeding. The right is reserved to the parties hereto to apply to this Court for any other instructions to the Debtor or to any trustee or trustees thereof appointed as aforesaid, and this Court reserves the full right and jurisdiction to make, from time to time, such further orders amplifying, extending, limiting or
92 otherwise modifying this Order as this Court may at any time deem proper, and in all respects and at all times to regulate and control the conduct of Debtor.

Dated June 22, 1933.

C. B. FARIS,
District Judge.

Approved:
Paul Bickel,
T. T. Railey,
Edw. J. White,
Daniel N. Kirby,
Edwin S. S. Sunderland,
Allen C. Orrick.

Filed June 22, 1933. Jas. J. O'Connor, Clerk.

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96 Order Supplementing Order Appointing Trustees.

Effective July 1, 1933, contracts or conveyances made pursuant to authority of orders entered in this proceeding shall be in the name of the Trustees, followed by designation of the particular Debtor or Debtors involved, as, for example:

L. W. Baldwin and Guy A. Thompson,
Trustees, Missouri Pacific Railroad Co., Debtor.

In actions by or against said Trustees and in the execution of checks, drafts, vouchers, bills of exchange, and bills of lading, they shall be similarly described.

Power to execute any such documents in their behalf may be delegated by said Trustees, and checks or vouchers so issued need not be countersigned as required by the usual rules in bankruptcy.

Employees and agents in the employ of the respective Debtors at the close of business June 30, 1933 shall, until otherwise directed by or in behalf of the Trustees, continue in their positions as agents of the Trustees in the operation of the property of the respective Debtors; and, as agents for said Trustees and under their direction, shall continue
97 to take any necessary action to protect the rights, interest, and corporate organization of the Debtor Companies.

Any cause of action accruing during the operation of the property of any of the Debtors under the jurisdiction of this Court in this proceeding may with like effect be prosecuted by or against the Trustees of the Debtor so involved as successors in interest in the estate of said Debtor. Until further order any claim against said Trustees may be filed without leave, and shall stand referred to Special Master Marion C. Early for hearing and report.

The Trustees in their capacity as such, may maintain suits to enforce any causes of action in behalf of any of the corporations, Debtors in this proceeding, accruing prior to the filing of such Debtor's petition for reorganization.

The Court reserves full right and jurisdiction to abrogate, amplify, limit, or otherwise modify this order, and in all respects to regulate and control the conduct of said Trustees.

C. B. FARIS,
District Judge.

Dated June 30, 1933.

Filed Jun. 30, 1933. Jas. J. O'Connor, Clerk.

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98 Order Confirming Appointment, Entered June 22, 1933, Temporarily Appointing Trustees.

On March 31, 1933, the Missouri Pacific Railroad Company, Debtor, filed its petition herein, stating that Debtor was un-

able to meet its obligations as they matured and would mature and that it desired to effect a plan of reorganization, in accordance with the provisions of Section 77 of Chapter VIII of the Act of Congress relating to bankruptcy.

The Court, being satisfied that said petition complied with said section of the Act and that it was filed in good
99 faith, thereupon, on March 31, 1933, approved said petition as properly filed, under said section of the Act, and entered an order, authorizing the Debtor, pending further order of this Court in the premises, to operate and maintain the railroads and property of the Debtor, wherever situated, and to manage and conduct its business, and to exercise general and specified powers, according to law, and subject to such supervision and control by the Court as the Court might exercise by further orders entered herein.

Subsequent to said date, petitions having been filed by various subsidiaries of said Missouri Pacific Railroad Company, Debtor, in this cause, and the Court, having fully considered said petitions, approved the same as properly filed under said section of the Act and entered orders authorizing said Debtors, pending the further order of this Court, in the premises, to continue to operate and maintain the railroads and property of said Debtors, wherever situated, and to manage and control the business of said Debtors and to exercise the different, sundry powers, according to law, specified in said orders, subject to the supervision and control of this Court as the Court might exercise by further orders entered herein.

On June 22, 1933, pursuant to the provisions of Section 77 of said Act, this Court entered an order, temporarily appointing L. W. Baldwin and Guy A. Thompson, both of St. Louis, Missouri, as temporary Trustees for the railroads and property of, all and singular, the railroads, lands, properties, estates rights and franchises, of whatever character and wherever situated, of all of said Debtors, said Trustees having been selected from a panel of standing trustees, desig-
100 nated and qualified for service as such, pursuant to sub-division (c) of Section 77 of Chapter VIII of the Act of Congress relating to bankruptcy, said order, appointing Trustees, to be effective as of the beginning of business on July 1, 1933, and said order specifying that such appointment should apply to the estates of all Debtors hereafter becoming parties to this proceeding from and after the respective dates of approval of the petitions of such subsequent Debtors.

And said order, temporarily appointing said Trustees, having provided that notice should be published once a week for two, consecutive weeks in one, daily newspaper of general circulation in each of the Cities of St. Louis, and Kansas City, Missouri; Houston, Texas; Omaha, Nebraska; Little Rock, Arkansas; New Orleans, Louisiana, and New York, New York, notifying all persons, firms and corporations having in their possession any of the property of the Debtors to deliver the same to the Trustees, and notifying the creditors and stockholders of said Debtors that, on the 25th day of July, 1933, at eleven o'clock in the Forenoon, Central Standard Time, the undersigned Judge, in the Court Room of the United States District Court at the Federal Building in St. Paul, Minnesota, would determine whether such appointment of such Trustees should be made permanent or should be terminated or a substitute Trustee or Trustee should be appointed by the Court, and, it appearing to the Court that, within ten days from and after July 1, 1933, each of said Trustees executed and filed with the Clerk of the United States District Court for the Eastern Division, Eastern Judicial District of Missouri, a bond, with solvent sureties, in the sum of
101 fifty thousand dollars ($50,000.00), each, conditioned, as required in said order temporarily appointing said Trustees, entered June 22, 1933, and it further appearing to the Court that said Debtors have filed with the Court their report of compliance with said order, and that all known creditors and stockholders of the Debtors have been notified of this hearing, in accordance with the provisions of Section 77 of Chapter VIII of said Act, and this hearing being now held in accordance with said notice and the provisions of said Act, and certain creditors and stockholders of the Debtors having appeared by Counsel at this hearing, and the Court, having heard the arguments of said Counsel, and being duly advised in the premises and being of the opinion that the interests of all parties will be best conserved by affirming, until the further order of this Court, the order entered by the Court herein on June 22, 1933, temporarily appointing said L. W. Baldwin and Guy A. Thompson, Trustees of the railroads and properties of said Debtors; it is, therefore,

Ordered, Adjudged and Decreed that said order temporarily appointing said L. W. Baldwin and Guy A. Thompson, Trustees for the railroads and properties of said Debtors, entered June 22, 1933, Be, and the Same is Hereby, Confirmed and Approved, and said appointment of said Trustees is hereby made permanent, and the said L. W. Baldwin and Guy A. Thompson are hereby appointed permanent Trustees of, all and singular, the railroads, lands, properties, estates, rights

and franchises, of whatever character and wherever situated, of the

Missouri Pacific Railroad Company,

New Orleans, Texas & Mexico Railway Company,

International-Great Northern Railroad Company,

Missouri Pacific Railroad Corporation in Nebraska,

The Beaumont, Sour Lake & Western Railway Company,

The St. Louis, Brownsville and Mexico Railway Company,

San Antonio, Uvalde & Gulf Railroad Company,

Houston North Shore Railway Company

and

Missouri-Illinois Railroad Company,

and such appointments shall also apply to the estates of all Debtors hereafter becoming parties to this proceeding from and after the respective dates of the approval of the petitions of such subsequent Debtors.

And said Trustees shall have all the title and be subject to the control of the Court and, consistently with the provisions of Section 77 of Chapter VIII of the Act of Congress relating to bankruptcy, shall exercise all of the powers of trustees appointed pursuant to Section 44 or any other section of the Act of Congress relating to bankruptcy.

Such Trustees shall have all of the powers, rights and privileges heretofore granted to or conferred upon them while temporary Trustees, and all of the rights, powers and privileges heretofore granted to or conferred upon the respective Debtors, or any of them, pursuant to any or all of the orders heretofore entered by this Court in this proceeding, and each and all of the orders entered in this proceeding shall, with respect to the Trustees and the properties in their possession, be of like force and effect as though said Trustees were therein specifically named, instead of said respective Debtors, all of said orders being herein incorporated in and made a part of this order by reference.

And all persons, firms and corporations having in their possession any of the property of the Debtors or any of the prop-

erty of the Debtors subsequently becoming parties to this proceeding are hereby ordered to deliver the same to said Trustees and to make such transfers, assignments and conveyances in connection therewith as may be necessary and proper; and each and every of the officers, directors, agents and employes of the Debtors are hereby required to turn over and deliver to said Trustees, or their duly constituted representatives or agents, any and all books of account, vouchers, papers, deeds, contracts, notes, securities, accounts, moneys or other property in his or their hands, or under his or their control, belonging to or in the possession of any of said Debtors; and to abide by and conform to such orders as may be given from time to time by said Trustees, or their duly constituted representatives, in conducting the operations of the Debtors, and in the discharge of their duties as such Trustees.

And such Trustees are hereby authorized and directed to run, manage, maintain and, operate the railroads and properties of the Debtors, wherever situated, and to manage and conduct the business of each of said respective Debtors, and to exercise such sundry other powers according to law and subject to the supervision and control of the Court as the Court may exercise by other orders entered herein, all as set forth in the order of this Court temporarily appointing said Trustees, entered June 22, 1933, and in the sup-
104 plemental order appointing Trustees, entered June 30, 1933, and in the order granting Trustees authority to employ Attorneys, entered July 1, 1933.

And the Court reserves full right and jurisdiction to make, from time to time, such other and further orders as the Court shall deem proper, amplifying, extending, limiting or otherwise modifying such orders of June 22, 1933, temporarily appointing said Trustees, and said orders of June 30, 1933, and July 1, 1933, and, in all respects, to regulate and control the conduct of said Trustees.

C. B. FARIS,
U. S. District Judge.

Dated: St. Paul, Minn., July 25, 1933.

Received and filed Jul. 26, 1933. Jas. J. O'Connor, Clerk.

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106 Motion of Trustees for Authority to Pay Interest Due November 1, 1933, on the River & Gulf Division First Mortgage Bonds of the St. Louis, Iron Mountain & Southern Railway Company.

Come now the Trustees in the above-entitled cause and respectfully present to the Court:

That, because of the fact that the River & Gulf Division 4% First Mortgage Bonds of the St. Louis, Iron Mountain & Southern Railway Company, which matured May 1st, 1933, in the sum of $34,548,000.00, constituted a first lien upon the equipment, the collateral securities pledged there-
107 under, and the railroad of the Debtor, Missouri Pacific Railroad Company, for a distance of 781.47 miles, and the other facts presented to this Court in the application of the Debtor on May 3, 1933, the Court authorized the payment of the interest due on said bonds May 1st, 1933, in the sum of $690,960, which, in due course, was paid by said Debtor.

That the semi-annual interest upon said bonds, in the sum of $690,960, is due November 1, 1933, and, in the opinion of Trustees, it is advisable, in order to prevent a sacrifice of said mortgaged railroad and other property of the Debtor Railroad Company and the loss of its equity in said property and the loss thereof to its creditors, that said interest in the sum of $690,960, should be paid by the Trustees on November 1, 1933.

Wherefore, Trustees pray that the Court may enter an Order, authorizing the payment of said interest in said sum of $690,960.00 on November 1, 1933.

L. W. BALDWIN,
GUY A. THOMPSON,
Trustees.

Thos. T. Railey,
Edward J. White,
Attorneys for Trustees.

108 United States of America,
Eastern Judicial District of Missouri,
City of St. Louis, Missouri—ss.

L. W. Baldwin and Guy A. Thompson, being duly sworn, upon their oaths severally say that they have read the above and foregoing petition, and that the facts therein stated are true, as they verily believe.

L. W. BALDWIN,
GUY A. THOMPSON.

Subscribed and sworn to before me this 27th day of September, 1933.

My commission expires June 26th, 1937.

GEO. W. COLLINS,
(Seal) Notary Public.

Filed Sep. 28, 1933. Jas. J. O'Connor, Clerk.

110 Order Authorizing the Payment of Interest, Due November 1st, 1933, on River & Gulf Division 4% First Mortgage Bonds of the St. Louis, Iron Mountain & Southern Railway Company, in the Sum of $690,960.00.

Upon reviewing and considering the Motion of the Trustees herein regarding the $690,960.00 interest due November 1st, 1933, on the River & Gulf Division 4% First Mortgage Bonds of the St. Louis, Iron Mountain & Southern Railway Company:

It Is Ordered by the Court that the Trustees be, and they are hereby, authorized and instructed to pay out of
111 funds coming into their hands the interest on November 1st, 1933, upon said bonds, in the sum of $690,960.00, provided said sum, at the interest rate of 4% upon said bonds, shall be received by the holders of said bonds in full for all interest due upon said bonds up to November 1, 1933.

C. B. FARIS,
United States District Judge.

Dated Sept. 27, 1933.

Filed Sep. 28, 1933. Jas. J. O'Connor, Clerk.

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114 Record Entry of Filing of Petition to Impound Income.

(December 27, 1933.)

Petition of Bankers Trust Company, et al., Trustees of St. Louis, Iron Mountain & Southern Railway Company River & Gulf Division, First Mortgage, for leave to intervene, for an order impounding income subject to mortgage and for other relief, together with notice to docket same for hearing on this day, filed by leave. Order adjourning hearing on such petition until January 29th, 1934, filed.

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115 Petition of Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain and Southern Railway Company, River and Gulf Divisions First Mortgage Due May 1, 1933, for Leave to Intervene, for an Order Impounding the Income Subject to the Mortgage, and for Other Relief.

To the Honorable the Judges of the District Court of the United States for the Eastern Division, Eastern Judicial District of Missouri:

The petition of Bankers Trust Company and William H. Bixby as Trustees under the River and Gulf Divisions First Mortgage of St. Louis, Iron Mountain and Southern
116 Railway Company, dated May 1, 1903, respectfully shows as follows:

I. That your petitioner, Bankers Trust Company, is and at all of the times wherein it is hereinafter mentioned was, a corporation duly organized and existing under the laws of the State of New York, duly authorized and empowered to hold in trust the property conveyed, transferred, pledged and assigned upon the trusts hereinafter stated, and to execute and perform the trusts reposed in it under and by virtue of the Mortgage hereinafter described.

II. That on May 1, 1903, St. Louis, Iron Mountain and Southern Railway Company (hereinafter sometimes called the Railway Company) was a consolidated corporation organized and existing under the laws of the States of Missouri and Arkansas; and The Mercantile Trust Company was a corporation duly organized and existing under the laws of the State of New York, and was then and at all of the times wherein it is hereinafter mentioned duly authorized and empowered to hold in trust the property conveyed, transferred, pledged and assigned upon the trusts hereinafter stated, and to execute and perform the trusts reposed in it under and by virtue of the Mortgage hereinafter described.

III. That on or about May 1, 1903, the Railway Company, duly and in accordance with law and with its by-laws, and for lawful and proper purposes, determined to create a bonded indebtedness by the issue of bonds not exceeding the aggregate principal sum of fifty million dollars, to be known as St. Louis, Iron Mountain and Southern Railway Company River and Gulf Divisions First Mortgage Four Per Cent. Thirty Year Gold Bonds (hereinafter sometimes
117 called the Bonds), maturing May 1, 1933, and bearing interest at four per cent (4%) per annum to maturity, payable semi-annually, and to execute the Mortgage hereinafter referred to.

IV. That in order to secure the payment of the principal and interest of all of the Bonds at any time issued and outstanding, and to secure the performance of all of the covenants and conditions therein contained, and to declare the terms and conditions upon which the said Bonds were to be issued, the Railway Company, on or about May 1, 1903, duly made and executed under its corporate seal a Mortgage dated May 1, 1903, known as its River and Gulf Division

First Mortgage (hereinafter sometimes called the Mortgage), a copy of which will be submitted to the Court upon the hearing of this petition as Exhibit "A" hereto, and which your petitioners pray may be deemed incorporated herein with the same force and effect as if herein set forth at length; that in and by the terms of the Mortgage The Mercantile Trust Company and William K. Bixby, a resident of St. Louis, Missouri, were named as Trustees thereof; that the Mortgage was duly delivered to said Trustees, and said Trustees duly accepted the trusts thereunder; and that the Mortgage was duly recorded in the States of Illinois, Missouri, Arkansas, and Louisiana.

V. That on or about August 10, 1911, The Mercantile Trust Company was duly merged into Bankers Trust Company pursuant to a merger agreement between said corporations and the law of the State of New York; that Bankers Trust Company became a Trustee of the Mortgage in the place and stead of The Mercantile Trust Company as a result of such merger and pursuant to the provisions of
118 the Mortgage; and that Bankers Trust Company has continued to be and still is such Trustee.

VI. That on October 28, 1931, William K. Bixby, one of the original Trustees named in the Mortgage, died; and that on February 4, 1932, your petitioner, William H. Bixby, a resident of St. Louis, Missouri, was duly appointed as a Trustee of the Mortgage as provided therein in the place and stead of the said William K. Bixby, and that William H. Bixby has continued to be and now is such Trustee and a resident of St. Louis, Missouri.

VII. That bonds validly issued under and secured by the Mortgage in the sum of thirty-four million five hundred forty-eight thousand dollars ($34,548,000) are now outstanding. Each of said bonds and the Mortgage provides that principal and interest is payable in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903.

VIII. That by the execution and delivery of the Mortgage, and as a result of the certification and delivery of Bonds by the Trustees thereof and the issuance of certificates by or on behalf of the Railway Company and its successor hereinafter mentioned as provided by the Mortgage, and by other acts and deeds of the parties to the Mortgage and their successors, the Trustees of the Mortgage have acquired and now have a valid and subsisting first lien on various and sundry lines of railroad and appurtenances, equip-

ment, bonds, stocks and other property, real, personal and mixed, having a value of many millions of dollars, including, among other property, that described in Petition No. 15 in this proceeding as follows:

119 Lines of Railroad	Miles
Des Peres Bridge Junction, Mo., to Top of Incline, Mo.	.54
Top of Incline, Ill., to Dupo Junction, Ill.	4.12
Vulcan, Ill., to Southern Connection, Ill.	2.32
Valley Junction, Ill., to Thebes, Ill.	119.33
Connection at Chester, Ill., to Chester & Mt. Vernon H. B. No. 6	.04
Main Line Connection, Ill., to Chester & Mt. Vernon Connection, Ill.	.26
M. H. & L. Connection, near New Latour, Ark., to M. H. & L. Connection, near McGehee, Ark.	81.80
Halley, Ark., to Clayton Junction, La.	140.61
Gorham, Ill., to Benton, Ill.	40.58
Bush, Ill., to East Carterville, Ill.	10.48
East Carterville, Ill., to Marion, West Conn., Ill.	5.82
East Carterville, Ill., to End of Track, near Hafer, Ill.	2.33
Marion Jct., Ill., to End of Track	.17
End of Track, near Herrin, Ill., to H. B. Herrin Extension, Ill.	.34
Marion, Ill., to Johnston City, Ill.	8.93
Connections at Herrin, Johnston City & Carterville, Ill.	2.16
Herrin Branch Connection, Ill., to M. & J. C. Connection, Ill.	4.81
Thebes Bridge Connection, Ill., to Thebes, Ill.	1.32
Connections at Thebes, Ill.	.11
Eudora, Ark., to Epps, La.	37.61
Cushman Branch Connection, Ark., to Carthage, Mo.	239.40
Crane, Mo., to Springfield, Mo.	35.28
C. R. I. & P. Connection, near Bridge Junction, Ark., to Marianna, Ark.	43.11
Total	781.47

120 Equipment:

29 Locomotives,
454 Gondola Cars,
22 Box Cars,
182 Coal Cars,

1 Flat Car,
1 Work Car,
4 Passenger Cars,
8 Electric Cars and
18 Ballast Cars and
Towboat Lockwood.

Securities:	Par Value
853 Bonds, First Mortgage, Union Railway Company (of Memphis)	$1,000,000.00
1 Bond, First Mortgage, Western Coal & Mining Company	$1,000,000.00

IX. That in and by the terms of the Mortgage the Railway Company granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over to the Trustees, their successors and assigns forever

"any and all the rents, issues, profits, tools and other income of all lines of railway, extensions and branches, and any part thereof, which are now or may hereafter become subject to the lien hereof, and any and all the rights, privileges, franchises, properties, real or personal, rights and things which the Railway Company now owns or hereafter shall possess, or become entitled to possess, for the purpose of, or in connection with, any such line of railway, extension or branch now or hereafter subject to the lien of this Indenture."

The Mortgage further provided:

"All the covenants, agreements, stipulations and pro-
121 visions in this Indenture contained, by or relating to the Railway Company, shall bind and relate to its successors and assigns, whether so expressed or not; and every successor corporation which shall be lawfully vested with the ownership of the properties subject to this Indenture shall possess and may exercise each and every right and power hereunder of the Railway Company."

X. That in and by various assignments and conveyances, including a deed from Lee W. Hagerman as Special Master, and others, to Missouri Pacific Railroad Company, dated May 12, 1917, a deed from Lee W. Hagerman as Special Master, and others, to Missouri Pacific Railroad Company in Illinois, dated June 2, 1917, and a deed from Missouri Pacific Railroad Corporation in Illinois to Missouri Pacific Railroad Company, dated June 29, 1918, all or a large part of the property now subject to the lien of the mortgage was duly transferred and conveyed to Missouri Pacific Railroad Company, one of

the Debtors herein, or to one or more of the other Debtors herein, prior to the filing of Petition No. 1 in this proceeding, and title to said mortgaged property is now vested in the Trustees appointed in this proceeding as Trustees of the said Missouri Pacific Railroad Company or as Trustees of one or more of the various Debtors herein and all of said mortgaged property is now in the custody of this Court; and Missouri Pacific Railroad Company and its Trustees appointed in this proceeding are successors of the Railway Company under the Mortgage.

XI. That petitions and orders herein numbered respectively 1, 15, 40, 57, and 86 have been filed in this proceeding; that your petitioners pray that said petitions and orders, and such other petitions and orders as may be specified in any proceedings on this petition, may be deemed incorporated in this petition with the same force and effect as if set forth herein at length; but such incorporation shall be only for the purpose of showing that such petitions and orders have been filed in this proceeding and without prejudice to any right which your petitioners may have to controvert any allegation in any such petition or to appeal from, or move to vacate or modify, any such order.

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XII. Neither the principal of the Bonds nor any part thereof was paid on the date on which they matured, May 1, 1933, or has since been paid.

XIII. Your petitioners are informed and believe, and therefore allege, that some, but not all, of the holders of the Bonds have accepted the payment of interest pursuant to Order No. 86 herein.

Wherefore, your petitioners pray

1. That your petitioners be permitted to intervene generally in this proceeding for the purpose of protecting their rights as Trustees of the Mortgage;

2. That the Mortgage be declared to be a valid and subsisting first lien on the property referred to in Petition No. 15 herein and Paragraph IX of this petition; and that the nature, extent and character of the other property on which the Mortgage is a valid and subsisting lien, and the priority of such lien, may be determined;

3. That all the rents, issues, profits, tolls and other income, accruing from time to time from the property subject to the lien of the Mortgage and which may come into the possession of any Debtor or Trustee in this proceeding (whether or not any such Debtor be now a party

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to this proceeding, or any such Trustee shall have been already appointed) be impounded as of the date of, and from and after the filing of this petition (without waiver of any claim of your petitioners to rents, issues, profits, tolls and other income accruing prior to such date), and segregated and sequestered by or under the direction of the Court for the benefit of your petitioners as Trustees of the Mortgage; and that after the deduction of such expenses and other items as may be lawful and proper the same be paid over to your petitioners as such Trustees as soon as practicable from time to time;

4. That the lien of the Mortgage be determined to be in the sum of Thirty-four million five hundred and forty-eight thousand dollars ($34,548,000), with interest thereon from May 1, 1933, at the rate of six per cent per annum, less such amounts as shall have been accepted by holders of the Bonds on account of interest since May 1, 1933; that such sum and interest be determined to be payable in gold coin of the United States of the standard and weight and fineness prevailing on May 1, 1903, or, in the alternative, that any determination with respect to the right of the Trustees to payment in such gold coin be reserved without prejudice to any rights which the Trustees may have to payment in such gold coin on a final determination herein; that the determination of the amount of the lien of the mortgage be incorporated in a formal judgment or decree of this Court substantially equivalent to a judgment in an action to foreclose the Mort-
124 gage; and that the amount specified in such judgment or decree be determined to bear interest at the rate of six per cent per annum;

5. That the Court determine that any and all sums paid over to your petitioners as Trustees on account of the rents, issues, profits, tolls and other income of the property subject to the lien of the Mortgage may be applied, after deduction by your petitioners as Trustees of their expenses and of just and reasonable compensation for your petitioners and for the service of all counsel, agents, and employees properly engaged and employed by them, first on account of interest accruing from time to time on the amount to be specified in the judgment or decree hereinabove prayed for, any balance remaining to be applied on account of so much of said judgment as may represent interest on the Mortgage or the Bonds, and any further balance remaining to be applied on account of so much of said judgment as may represent the principal of the Mortgage or the Bonds; and that the Court determine that any such sums of money so paid to your petitioners as Trus-

tees otherwise than in gold coin on account of any obligation payable in gold coin may be accepted by such Trustees at the market value of such sums of money in such gold coin at the times of such payments;

6. That your petitioners as such Trustees may have such other and further relief as they may be entitled to under the terms of the Mortgage and the provisions of law;

7. That the petition, and any and all proceedings pursuant thereto, may be without prejudice to any other rights or claims which your petitioners as such Trustees, or any
125 holders of the bonds, may have against any of the Debtors or Trustees for Debtors who may now or hereafter be parties to this proceeding, including any unsecured claims which they or any of them may have under subdivision (g) of Section 77 of the Bankruptcy Act.

Dated, December 4, 1933.

BANKERS TRUST COMPANY,
(Seal) By R. G. Page.

WILLIAM H. BIXBY,
As Trustees of the St. Louis, Iron Mountain and Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933,
Petitioners.

ALEXANDER & GREEN,
120 Broadway, New York, N. Y.,
Attorneys for Petitioners.

Attest:
W. C. Meyers,
Asst. Secretary.

126 United States of America,
State of New York,
Southern District of New York—ss.

R. G. Page, being duly sworn, deposes and says that he is an officer, to-wit, a vice president of Bankers Trust Company, one of the petitioners above named; that he has read the foregoing petition and knows the contents thereof; that the allegations contained therein with respect to the acts of Bankers Trust Company are true to his own knowledge, and that as to all other allegations contained therein he is credibly informed and believes that the same are true; that the seal

affixed to said petition is the corporate seal of the said petitioner and was so affixed by its authority.

R. G. PAGE.

Subscribed and sworn to before me this 5th day of December, 1933.

(Seal) H. H. GRIESMER,
Notary Public, Westchester County.
Certificate Filed in New York Co. No. 485. New York County Register's No. 5-G-177. Commission expires March 20, 1935.

127 United States of America,
State of Missouri,
City of St. Louis, Eastern Division,
Eastern Judicial District—ss.

William H. Bixby, being duly sworn, deposes and says that he is one of the petitioners above named; that he has read the foregoing petition and knows the contents thereof; that the allegations contained therein with respect to the acts of this deponent are true to his own knowledge, and that as to all other allegations contained therein he is credibly informed and believes that the same are true.

WILLIAM H. BIXBY.

Subscribed and sworn to before me this 7th day of December, 1933.

(Seal) EDWARD N. SANDHOFER,
Notary Public, in and for the City of St. Louis, State of Missouri.

My Commission Expires April 19, 1936.

Filed Dec. 27, 1933. Jas. J. O'Connor, Clerk.

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131 Petition of Reconstruction Finance Corporation and United States of America for Leave to Intervene.

To the Honorable, the Judges of the District Court of the United States for the Eastern Division, Eastern District of Missouri:

The petition of Reconstruction Finance Corporation and of the United States of America respectfully shows as follows:

I. Your petitioner, Reconstruction Finance Corporation, is now and has been at all times since the Act of Congress creating it, a corporation duly organized and existing
132 pursuant to the Reconstruction Finance Corporation Act (47 Stat. at L., 5; Title 15, U. S. C. A., ch. 14); that all the capital stock of said Corporation is owned by petitioner, the United States of America, and that the Board of Directors of the Corporation, including the Secretary of the Treasury, who is ex-officio, a member, are appointed by the President of the United States by and with the advice and consent of the Senate; that said Corporation, among other things, is an agency of the United States for various fiscal and other purposes and an instrumentality of government in carrying out policies of the United States, which joins herein by direction of the Attorney General.

II. That said Corporation on the following dates made loans to the debtor, Missouri Pacific Railroad Company, in the following amounts:

(a)	March 31, 1932	$ 2,950,000.00
(b)	April 8, 1932	805,000.00
(c)	April 29, 1932	3,195,000.00
(d)	October 1, 1932	10,150,000.00
(e)	February 1, 1933	3,000,000.00
(f)	March 1, 1933	3,034,800.00

for all of which the debtor duly executed and delivered to said Corporation its promissory notes and secured the same by the following collateral:

Temporary, First and Refunding, 5% Mortgage Gold Bonds, Series I, of the Missouri Pacific Railroad, due 2/1/81	$25,050,000.00
First and Refunding 5% Mortgage Gold Bonds, Series I, of the Missouri Pacific Railroad, due 2/1/81	7,200,000.00
133 Missouri Pacific Railroad's 25 year Convertible Gold Bonds, Series A 5½%, due 5/1/49	899,000.00
927 shares ($100.00 par value) Capital stock of the American Refrigerator Transit Company	.....
Temporary Certificate, Series A, 6%, Regular Refunding and Improvement Mortgage Gold Bonds of the Denver and Rio Grande Western Railroad Company, due 10/1/74	1,000,000.00

1,600 shares Capital Stock of the Fort Worth Belt Railway Company	.....
5½% Unsecured Demand note of the International Great Northern Railroad Company..	1,622,200.00
6% Unsecured Demand note of the International Great Northern Railroad Company ..	864,310.35
6% Adjustment Mortgage, Series A, 30 year Gold Bond of the International Great Northern Railroad Company, due 7/1/52..	2,095,000.00
First Mortgage 6% Gold Bonds of the Interstate Railway Company, due 7/1/20.....	1,622,000.00
Temporary, First Mortgage, 4½% Gold Bond Series D, of the New Orleans, Texas and Mexico Railway Company, due 8/1/56....	1,900,000.00
5,050 shares Capital Stock ($100.00 par value) of the New Orleans, Texas and Mexico Railway Company	.....
134 First Mortgage, 6% Bonds of the Prescott and Northwestern Railroad Company, due 10/1/32, extended to 10/1/34...	75,000.00
114,750 shares Common Stock of the Texas and Pacific Railway Company.....	.....
Demand notes of the New Orleans, Texas and Mexico Railway Company, secured by 74,989 shares Capital Stock ($100.00 par value) of the International Great Northern Railroad Company	9,955,226.78

III. That all of said notes bear interest from their dates, respectively, at the rate of 6% per annum and that all of them are wholly in default, both as to principal and interest; that nothing has been paid thereon by or for the debtor since the filing of its petition herein, and that the amount now due and payable by the debtor to the Corporation on account of the principal thereof is $23,134,800, with accrued and unpaid interest thereon through December 31, 1933, amounting to $1,521,193.75, amounting to a total of $24,655,993.75 on account of principal and interest as of December 31, 1933.

That the value of the collateral hereinbefore described and held by the Corporation as security is substantially less than the amount owed to it by the debtor and that much of the collateral itself is also in default; that it is impossible at this time to realize from said collateral an amount sufficient to

discharge the indebtedness thereby secured to the Corporation.

IV. That on December 27, 1933, the Bankers Trust Company and William H. Bixby, Trustees of the St.
135 Louis, Iron Mountain and Southern Railway Company, River and Gulf Divisions First Mortgage, due May 1, 1933, were permitted by this court to file their petition for leave to intervene generally in this proceeding, and that hearing thereon by this court is set for January 29, 1934; that in their petition, in addition to praying for permission to intervene generally in this proceeding for the purpose of protecting their rights as trustees of said mortgage, said petitioners prayed as follows:

"2. That the Mortgage be declared to be a valid and subsisting first lien on the property referred to in Petition No. 15 herein and Paragraph IX of this petition; and that the nature, extent and character of the other property on which the Mortgage is a valid and subsisting lien, and the priority of such lien may be determined;

"3. That all the rents, issues, profits, tolls and other income, accruing from time to time from the property subject to the lien of the Mortgage and which may come into the possession of any Debtor or Trustee in this proceeding (whether or not any such Debtor be now a part of this proceeding, or any such Trustee shall have been already appointed) be impounded as of the date of, and from and after the filing of this petition (without waiver of any claim of your petitioners to rents, issues, profits, tolls and other income accruing prior to such date, and segregated and sequestered by or under the direction of the Court for the benefit of your petitioners as Trustees of the Mortgage; and that after the deduction of such expenses and other items as may be lawful and proper the same be paid over to your petitioners as such Trustees as soon as practicable from time to time;

136 "4. That the lien of the Mortgage be determined to be in the sum of Thirty-four Million five hundred and forty-eight thousand dollars ($34,548,000), with interest thereon from May 1, 1933, at the rate of six per cent per annum, less such amounts as shall have been accepted by holders of the Bonds on account of interest since May 1, 1933; that such sum and interest be determined to be payable in gold coin of the United States of the standard and weight and fineness prevailing on May 1, 1903, or, in the alternative, that any determination with respect to the right of the Trustees to payment in such gold coin be reserved without prej-

udice to any rights which the Trustees may have to payment in such gold coin on a final determination herein; that the determination of the amount of the lien of the mortgage be incorporated in a formal judgment or decree of this Court substantially equivalent to a judgment in an action to foreclose the Mortgage; and that the amount specified in such judgment or decree be determined to bear interest at the rate of six per cent per annum.

"5. That the Court determine that any and all sums paid over to your petitioners as Trustees on account of the rents, issues, profits, tolls and other income of the property subject to the lien of the Mortgage may be applied, after deduction by your petitioners as Trustees of their expenses and of just and reasonable compensation for your petitioners and for the service of all counsel, agents, and employees properly engaged and employed by them, first on account of interest accruing from time to time on the amount to be specified in the judgment or decree hereinabove prayed for, any balance remaining to be applied on account of so much of said judgment as may represent interest on the Mortgage or the
137 Bonds, and any further balance remaining to be applied on account of so much of said judgment as may represent the principal of the Mortgage or the Bonds; and that the Court determine that any such sums of money so paid to your petitioners as Trustees otherwise than in gold coin on account of any obligation payable in gold coin may be accepted by such Trustees at the market value of such sums of money in such gold coin at the time of such payments;

"6. That your petitioners as such Trustees may have such other and further relief as they may be entitled to under the terms of the Mortgage and the provisions of law;

"7. That this petition, and any and all proceedings pursuant thereto, may be without prejudice to any other rights or claims which your petitioners as such Trustees, or any holder of the Bonds, may have against any of the Debtors or Trustees for Debtors who may now or hereafter be parties to this proceeding, including any unsecured claims which they or any of them may have under subdivision (g) of Section 77 of the Bankruptcy Act."

V. That your petitioners will be adversely and gravely affected and their rights seriously impaired if the prayer of the Trustees above-named should be granted, for that, among other reasons, none of the collateral hereinbefore described and held by said Corporation to secure the amount owed to it by the debtor, as aforesaid, is entitled to a lien

on the properties of the debtor covered by said mortgage prior or superior to the lien alleged to be granted by said mortgage to the Trustees thereof and the revenues of the debtor applicable to the payment of its indebtedness
138 to said Corporation, as also to the payment of its obligations constituting part of the collateral held by said Corporation, will be substantially diminished and wholly inadequate if such income should be segregated and set apart for the payment of sums alleged to be due and secured by said mortgage on any basis or in any manner other than the par or face amount thereof in lawful money of the United States; and such payment on the basis or in the manner prayed by said Trustees would have the practical effect of enhancing and increasing the indebtedness secured by said mortgage in a large amount beyond what is due and payable in lawful money of the United States, while at the same time and in the same proportion reducing the amount available and payable to said Corporation on the indebtedness to it and for which it is willing to accept such lawful money; that payment to said Trustees in other than lawful money will be unauthorized and unlawful, as petitioners are advised.

VI. Not only will your petitioners be adversely and gravely affected, and their rights seriously impaired if the prayer of the Trustees above-named should be granted in this proceeding, in the respects mentioned, but relatively the same situation exists or will arise in other similar proceedings involving many millions of dollars, payable to said Corporation and other creditors, by railway companies and other corporations in process of liquidating their indebtedness or in process of reorganization, so that the questions now presented are of paramount importance and this Court's action thereon will be of far-reaching consequence to petitioners in this and similar proceedings and to the United States in general.

139 VII. Your petitioners allege further, and the United States particularly alleges, that the 73rd Congress, among other measures dealing with the emergency then and now existing, adopted Public Resolution No. 10 (a joint resolution to secure uniform value to the coins and currencies of the United States) as follows:

"Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

"Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin, or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority in such law.

"(b) As used in this resolution, the term 'obligation' means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term 'coin or currency' means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

"Sec. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled 'An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes', approved May 12, 1933, is amended to read as follows:

" 'All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal

Reserve banks and national banking associations) heretofore or hereinafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the
141 single piece, shall be legal tender only at valuation in proportion to their actual weight.' "

That said resolution, which was approved June 5, 1933, is in full force and effect, and it not only prohibits payment of the bonds and interest secured by the mortgage to said Trustees in gold coin or in other than lawful money of the United States, but expressly declares to be against public policy the clause or provision relied upon as authorizing and requiring payment "in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903," and they have both the right and duty of intervening for the purpose of contesting any assertion or claim of said Trustees or others interested to the contrary, as they are advised.

Wherefore, your petitioners pray this honorable Court:

(1) That said Corporation be permitted to intervene generally in this proceeding and to become a party thereto.

(2) That your petitioners be permitted to file an answer to the petition of Bankers Trust Company and William H. Bixby, Trustees of the St. Louis, Iron Mountain and Southern Railway Company, River and Gulf Divisions First Mortgage, due May 1, 1933, with the right to file motions, pleadings and other papers, to be heard by testimony and argument in opposition to said petition, and to take such steps and proceedings in connection therewith or resulting therefrom as may be proper; and

(3) That the United States, either by joinder with
142 said Corporation, because of its ownership thereof and interest therein, or separately in its sovereign capacity, be allowed to assert the full force and effect which ought to be given to the Public Resolution hereinbefore set out, and to maintain the same against said trustees and others affected thereby.

RECONSTRUCTION FINANCE
CORPORATION,
By Stanley Reed, General Counsel.

UNITED STATES OF AMERICA,
By Angus D. MacLean,
Assistant Solicitor General.

Authorized and Approved:

HOMER CUMMINGS,
Attorney General.

MAX O'RELL TRUITT, Counsel.

GREEN, HENRY & REMMERS,
JOHN RAEBURN GREEN,
C. M. CLAY, Of Counsel.
Attorneys for Petitioners.

143 District of Columbia,
City of Washington—ss.

The undersigned, H. A. Mulligan, being duly sworn, deposes and says that he is Treasurer of the Reconstruction Finance Corporation, one of the petitioners above-named; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to matters therein stated upon information and belief, and as to those matters he believes it to be true.

H. A. MULLIGAN.

Subscribed and sworn to before me this January 22, 1934.

DAVID B. GRIFFIN,
Notary Public.

(Seal)

Filed Jan. 25, 1934. Jas. J. O'Connor, Clerk.

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147 Record Entry Showing Petition to Intervene Submitted.

(January 29, 1934.)

By leave of Court, Messrs. Fordyce, White, Mayne and Williams, enter their appearance herein as associate counsel for Bankers Trust Co. Exhibit A to petition of Bankers Trust Co., et al., trustees, etc. for leave to intervene etc., as well as opposition of trustees to said petition filed by leave. Such petition of Bankers Trust Co., et al., trustees, etc. for leave to intervene argued and submitted.

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148 Record Entry of Filing of Memoranda Opinions.

(March 24, 1934.)

Memoranda of oral opinions of the Court in the matter of petitions for leave to intervene of Irving Trust Company, United States of America, Bankers Trust Company, et al., and John W. Stedman, et al., filed.

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149 Record Entry of Filing of Orders Permitting Intervention.

(April 5, 1934.)

Separate orders (3) filed granting United States of America and Reconstruction Finance Corporation leave to intervene specially in this cause. Order denying without prejudice petition of John W. Stedman, et al., etc., leave to intervene herein, filed.

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150 Order Permitting Intervention of the Reconstruction Finance Corporation.

This cause this day having come on to be heard on the joint petition of the Reconstruction Finance Corporation and United States of America for leave to intervene herein, and it appearing to the Court that all parties of record have been duly notified of the hearing, and for good cause shown, the Court being fully advised in the premises, finds that the prayer of said petition for a general intervention should be denied; that the prayer of said petition for a special intervention should be granted; it is, therefore,

151 Ordered, Adjudged and Decreed

That said Reconstruction Finance Corporation is hereby given leave to intervene especially to protect and fully conserve, its rights mentioned in its petition and is hereby admitted and constituted a special party to this cause, with the right to have notice served on its counsel or any of them, to file motions, answers, pleadings, and other papers, in said matters to be heard by testimony and by argument, and to take such other steps and proceedings in this cause as it may deem proper to protect and conserve its said rights, interests and property in the estate of the Debtor or Debtors herein; provided, however, that the Court reserves the right to enter orders pursuant to petitions or motions of the Trustees herein without notice thereof to any party or parties, where, in the judgment of the Court, such notice is not necessary to protect the interests of any such party not served with notice.

It Is Further Ordered that the Trustees of the Missouri Pacific Railroad Company are granted twenty days from March 21, 1934, in which to answer said intervening petition.

C. B. FARIS,
U. S. District Judge.

Filed April 5th, 1934.

Filed Apr. 5, 1934. Jas. J. O'Connor, Clerk.

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154 Order Permitting Special Intervention on Petition of Bankers Trust Company and William H. Bixby, Trustees of St. Louis, Iron Mountain & Southern Railway Company River and Gulf Division, First Mortgage.

Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain and Southern Railway Company River and Gulf Division First Mortgage due May 1, 1933, having, on or about December 12, 1933, duly served on all the parties to this proceeding their petition, dated December 4, 1933, for leave to intervene and for the segregation, sequestering and impounding of the tolls, income,
155 rents, revenues, issues and profits of the property subject to said Mortgage, and for other relief, together with a notice of motion on said petition returnable December 27, 1933, and the hearing on said motion having been duly adjourned to the 29th day of January, 1934, and the Court having made an order herein providing that all orders, if any, made on such petition be made and take effect as of the 1st day of January, 1934, and the said petition having duly come on to be heard on the 29th day of January, 1934, and the Court having heard the arguments of counsel and being fully advised in the premises:

It Is Ordered, Adjudged and Decreed, as follows:

That the petition of said Trustees of said Mortgage to intervene generally at this time is denied.

It Is Further Ordered that said Trustees of said Mortgage are hereby given leave to intervene specially to protect and fully conserve their rights mentioned in their petition, and are hereby admitted and constituted a special party to this cause, with the right to have notice served on their counsel, Messrs. Alexander & Green, 120 Broadway, New York, New York, and Messrs. Fordyce, White, Mayne & Williams, 506 Olive Street, St. Louis, Missouri, or any of them, to file motions, answers and pleadings, and other papers, in said matters, to be heard by testimony and by argument, and take such other steps and proceedings in this cause as they may deem proper to protect and conserve their rights, interest and property in the estate of the Debtor or Debtors herein; provided, however, that the Court reserves the right to enter orders pursuant to petitions or motions of the Trus-
156 tees herein, without notice thereof, to any party or parties, where, in the judgment of the Court, such notice is not necessary to protect the interest of any such party not served with notice.

It Is Further Ordered that the Trustees of Missouri Pacific Railroad Company, Debtor, the Trustees of the First and Refunding Mortgage of Missouri Pacific Railroad Company and Reconstruction Finance Corporation, shall have twenty days from March 21, 1934, in which to answer the petition of Bankers Trust Company and William H. Bixby, as such Trustees, as to the issues not disposed of in this order.

C. B. FARIS,
United States District Judge.

Filed April 5, 1934.

Filed Apr. 5, 1934. Jas. J. O'Connor, Clerk.

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158 (Order Granting Leave to United States of America to Intervene.)

On this date, this cause coming on to be heard upon the intervening petition of the United States, represented by the Attorney-General and the United States District Attorney, and it appearing to the Court that the Commissioner of Internal Revenue asserts that the United States has a lien for taxes against the Missouri Pacific Railroad Company, Debtor, and certain of its subsidiaries prior to the lien for taxes of the different States through which the said railroads are operated and prior to the lien asserted by the Trus-
159 tees of the mortgages upon the property of said Debtors and that the United States has a pecuniary interest in this cause:

It Is Ordered, Adjudged and Decreed by the Court:

That the petition of the United States to intervene generally in this cause is denied; but that the United States be, and it is hereby permitted, to intervene specially in this cause, in order to assert its rights herein and to defend against the rights asserted by Debtors and the Trustees of their mortgages insofar as same shall affect the rights of the Government; and

It Is Further Ordered that the Trustees of the Missouri Pacific Railroad Company and the other Debtors in this cause shall have twenty days from March 21, 1934, in which to answer said intervening petition.

C. B. FARIS,
United States District Judge.

Filed April 5th, 1934.

Filed Apr. 5, 1934. Jas. J. O'Connor, Clerk.

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162 (Record Entry of Filing of Answer of Reconstruction Finance Corporation to Petition of Bankers Trust Company, et al., for Leave to Intervene.)

April 9, 1934.

Answer of Reconstruction Finance Corporation, Intervener, to petition of Bankers Trust Company, et al., etc., for leave to intervene, filed.

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163 (Answer of Reconstruction Finance Corporation to Petition of Bankers Trust Company, et al., for Leave to Intervene.)

And now come Reconstruction Finance Corporation, Intervener herein, and for answer to the petition filed by Bankers Trust Company and William H. Bixby as Trustees of the St. Louis, Iron Mountain and Southern Railway Company, River and Gulf Division, First Mortgage, due May 1, 1933, for leave to intervene, etc., dated December 4, 1933 and presented to this Court on December 27, 1933, say:

1. It admits the allegations of paragraphs I, II, III, IV, V and VI of said petition.

164 2. For lack of sufficient information it is unable either to admit or deny the allegation contained in the first sentence of paragraph VII of said petition, and demands strict proof thereof. It denies the allegation contained in the second sentence of paragraph VII.

3. For lack of sufficient information, it is unable either to admit or deny the allegations of paragraph VIII of said petition, and demands strict proof thereof.

4. It admits the allegations of paragraphs IX and X of said petition.

5. It admits the allegations of paragraph XI of said petition, but without prejudice to any right which it may have to controvert any allegation in petitions numbered, respectively, 1, 15, 57 and 86, or to appeal from, or move to vacate or modify anything contained in, orders numbered respectively 1, 15, 40, 57 and 86.

6. For lack of sufficient information, it is unable either to admit or deny the allegations of paragraphs XII and XIII of said petition, and demands strict proof thereof.

Further answering, it states:

7. Further answering, your intervener states that the primary purpose of Section 77 of Chapter VIII of the Acts of

Congress relating to bankruptcy, under which the Court acquired jurisdiction in this cause, is to enable the debtor to effect a plan of reorganization; that Petition No. 1 contained such allegation and that the Court by Order No. 1 so found; that the impounding, segregation, sequestration and paying over to the Trustees of the St. Louis, Iron Mountain
165 and Southern Railway Company, River and Gulf Divisions, First Mortgage, from time to time, as prayed for in said petition, of said rents, issues, profits, tolls and other income derived or to be derived from time to time from the operation of the property alleged to be subject to the lien of the aforesaid First Mortgage would hinder, impede, obstruct and delay the orderly preparation, promulgation and consummation of a plan of reorganization for the debtor; and that said petition is in effect the commencement of or continuance of a judicial proceeding to enforce the alleged lien of said First Mortgage against the estate of the debtor in a manner contrary to and in conflict with Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy.

8. It alleges that the 73rd Congress, among other measures dealing with the emergency then and now existing, adopted Public Resolution No. 10 (a joint resolution to secure uniform value to the coins and currencies of the United States) as follows:

"Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

"Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it

166 "Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the

United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

"(b) As used in this resolution, the term 'obligation' means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term 'coin or currency' means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve Banks and national banking associations.

"Sec. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled 'An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness,
to provide for the orderly liquidation of joint-stock
167 land banks, and for other purposes', approved May 12, 1933, is amended to read as follows:

" 'All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight.' "

that said resolution, which was approved June 5, 1933, is in full force and effect, and it not only prohibits payment of the sums secured by the aforesaid mortgage in gold coin or in other than lawful money of the United States but expressly declares to be against public policy the clause or provision relied upon by the Trustees of the aforesaid mortgage as authorizing and requiring payment "in gold coin of the

United States of the standard of weight and fineness prevailing on May 1, 1903".

9. It alleges that the 73d Congress, among other measures dealing with the emergency then and now existing, enacted Public Act No. 1, which was approved March 9, 1933, and, except as may be amended by the Act of Congress referred to in paragraph "10" hereof, is in full force and effect; that said Act authorized the President of the United States to regulate and prohibit, among other things, transactions in foreign exchange, transfers of credit between or payments by banking institutions as defined by the President, and the export, hoarding, melting or earmarking of gold or silver coin or bullion or currency, and con-
168 firmed such actions theretofore taken by the President; and authorized the Secretary of the Treasury to require any or all persons to deliver to the Treasurer of the United States any or all gold coin, gold bullion and gold certificates owned by such persons; that consonant with and pursuant to said Act Orders were issued by the President on March 6, March 10, April 5, April 20, August 28, August 29, October 25, 1933, and January 12, 1934, and by the Secretary of the Treasury on December 28, 1933, January 11 and January 15, 1934, regulating and prohibiting the ownership, export, hoarding, melting or earmarking of gold coin or bullion or currency; that such orders prevent, and were intended to prevent, the payment of the sums secured by the aforesaid mortgage "in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903".

10. It alleges that the 73rd Congress enacted the Gold Reserve Act of 1934, which was approved January 30, 1934, and is in full force and effect; that said Act prohibits the coinage of gold and the payment or delivery of gold coin by the United States, and requires that all gold coin of the United States be withdrawn from circulation; that said Act requires the Secretary of the Treasury, with the approval of the President, to prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked; that pursuant to said Act, the Secretary of the Treasury, with the approval of the President, on January 30 and 31, 1934, issued provisional regulations prescribing the conditions under which such acquisition and disposition of gold might be effected; that said Act and said regulations prohibit payment of the
169 sums secured by the aforesaid mortgage "in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903".

11. In order to effect an orderly preparation and consummation of a plan of reorganization for the debtor under Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, which is the primary purpose of said Section 77, under which these proceedings are now pending, it is necessary that the court determine without delay whether or not the debt alleged to be owing on account of the principal of the bonds and the interest now or hereafter due, secured by the aforesaid mortgage and on account of the expenses of the Trustees and of the compensation of the aforesaid petitioner and for the services of all counsel, agents and employees properly engaged and employed by them, may be satisfied by the payment of the face amount of said debt in lawful money of the United States, since until this determination is made, the nature and extent of the claims and interests of the various creditors cannot be definitely ascertained.

Wherefore, in answer to the prayers of said petition of the aforesaid Trustees, your intervener prays as follows:

1. That prayers Nos. 2, 3, 4, 5, 6 and 7 of said petition be denied, pending full determination of the issues herein.

2. That the Court determine without delay that the debt alleged to be owing on account of the principal of the bonds and the interest now or hereafter due, secured by the aforesaid mortgage and on account of the expenses of the
170 Trustees and of the compensation of the aforesaid petitioner and for the services of all counsel, agents and employees properly engaged and employed by them, may be satisfied by the payment of the face amount of said debt in lawful money of the United States.

April 5, 1934.

RECONSTRUCTION FINANCE CORPORATION,
By Stanley Reed, General Counsel.

Max O'Rell Truitt,
Cassius M. Clay, Counsel,
Green, Henry & Remmers,
Of Counsel.

District of Columbia,
City of Washington—ss.

The undersigned, Stanley Reed, being duly sworn, deposes and says that he is General Counsel and likewise an officer of the Reconstruction Finance Corporation, intervener above named; that as such officer he is authorized to execute

the foregoing answer; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to matters therein stated upon information and belief, and as to those matters he believes it to be true.

STANLEY REED.

Subscribed and sworn to before me this April 5th, 1934.

GEORGE C. LYNCH,
Notary Public.

(Seal)

Filed Apr. 9, 1934. Jas. J. O'Connor, Clerk.

Refiled July 9, 1934. Jas. J. O'Connor, Clerk.

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171 (Record Entry of Filing of Answer of Trustees to Intervening Petition of Bankers Trust Company, et al.)

April 10, 1934.

Answers (2) of Trustees to intervening petitions of Bankers Trust Co., et al., etc. and Irving Trust Co., etc., filed.

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172 Answer of Trustees to Intervening Petition of Bankers' Trust Company and William H. Bixby, Trustees of St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions, First Mortgage.

Come now L. W. Baldwin and Guy A. Thompson, Trustees of the Missouri Pacific Railroad Company, and, for answer to the intervening petition of the Bankers' Trust Company and William H. Bixby, Trustees of St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions, First Mortgage, said Trustees:

I.

Admit the allegations in paragraphs I, II, III, IV, V, VI, VII, VIII, IX and X of said intervening petition.

173 II.

For answer to paragraph XI of said intervening petition, said Trustees admit that Orders, numbered 1, 15, 40, 57 and 86, have been entered by the Court in this proceeding, but said Trustees allege that said interveners, in claiming the benefit of said Orders, are estopped to controvert or question the validity thereof.

III.

Trustees further admit the allegations in paragraph XII of said intervening petition.

IV.

For answer to paragraph XIII of said petition, Trustees allege that they have caused to be deposited with their paying agent in the City of New York interest in full upon said Mortgage Bonds up to November 1, 1933, and that all of the holders of said bonds, who deposited their bonds and were willing to receipt for said interest payments due thereon, have been paid therefor in full.

V.

With respect to the prayer of the intervening petition that the nature, extent and character of the other property on which said mortgage is a valid and subsisting lien and the priority of said lien be determined, Trustees aver that Section 77 of the Bankruptcy Act does not contemplate that the Court shall determine such questions at this stage of the reorganization proceedings and said questions are prematurely raised and should not be considered or determined by the Court at this time.

174 VI.

With respect to the prayer of said intervening petition that the rents, issues, profits, tolls and other income accruing from the property subject to the lien of said mortgage be impounded, segregated and sequestered and paid over to said intervening petitioners, as Trustees under said mortgage, and that the Court determine the application and disposition to be made thereof by said intervening petitioners, as Trustees under said mortgage, Trustees aver that said prayer should be denied because:

(a) Section 77 of the Bankruptcy Act does not contemplate that the Court shall determine such questions at this stage of the reorganization proceedings and said questions are prematurely raised and should not be considered or determined by the Court at this time, and

(b) The granting of said prayer would constitute an enforcement of a lien upon the bankrupt estate which is in contravention of the clear intents of said Section 77, paragraph "L", of the Bankruptcy Act, and

(c) Under and by virtue of Article Ten of said Mortgage, the mortgagor was permitted to remain in possession of the tolls, earnings, rents, issues and profits until default occurred

in said Mortgage, said Article Ten of said Mortgage being as follows:

"Article Tenth.

Right of Railway Company to Possession.

Until some default shall have been made in the due and punctual payment of the interest or of the principal of the bonds hereby secured, or of some part of such interest or principal, or in the due and punctual performance and
175 observance of some covenant or condition hereof obligatory upon the Railway Company, and such default shall have continued beyond the period of grace, if any, herein provided in respect thereof, the Railway Company, its successors and assigns shall be suffered and permitted to retain actual possession of the railroads, premises and property hereby mortgaged, and to manage, operate and use the same and every part thereof, with the rights and franchises appertaining thereto, and to collect, receive and take the tolls, earnings, rents, issues, profits and other income thereof; but the Railway Company hereby covenants and agrees to first pay from such income, after paying the operating expenses of said railroads and the taxes thereon, the interest accruing and maturing upon the bonds issued hereunder; and such income, after paying the operating expenses of said railroads, shall, either before or after default, and whether said railroads are operated by the Railway Company, or by the Trustees under the power of entry hereinbefore reserved, or by a receiver or receivers appointed by any court at the instance of the Railway Company or of any creditor, stockholder or other person interested in said Company or having the right to apply for such appointment, be primarily pledged and applied to the payment of the interest and principal of said bonds in the order of priority declared in Section 1 of Article Fifth hereof."

The Trustees present to the Court that, prior to the default of said Mortgage, to-wit, on May 1, 1933, the petition in bankruptcy was filed by the Debtor, Missouri Pacific Railroad Company, i. e., on March 31, 1933, and, prior to the filing of the petition in bankruptcy, the said Trustees
176 had not attached or sequestered or attempted to attach or sequester the tolls, rents, earnings, issues and profits and other income accruing upon said mortgaged property, by reason of which, the Trustees appointed by this Court succeeded to the legal title of said rents and profits and other income from said premises, and said Bankers' Trust Company and William H. Bixby, therefore, are not entitled

to segregate or sequester the same for the benefit of said Trustees of said Mortgage.

Further, Trustees aver that they are so keeping their books of account as to show all tolls, incomes, rents, revenues, issues and profits derived from the property of said Debtor which is subject to the lien of said mortgage and that they will continue to so keep their books of account during the pendency of this proceeding.

VII.

With respect to the prayer of said intervening petition that the sum secured by said mortgage with interest thereon be determined to be payable in gold coin of the United States of the standard and weight and fineness prevailing on May 1, 1903, as provided in said mortgage and in the bonds secured thereby, Trustees aver that said provisions of said mortgage and said bonds are void and of no effect for the reason that the Congress of the United States, under Joint Resolution of the House and Senate of the United States, adopted June 5, 1933, provided that promises to pay dollars in gold coin could be satisfied by the payment of dollars in any other form, and said Joint Resolution set aside and rendered nugatory said provisions of said Mortgage and bonds, and, to enforce said provisions against the Debtor or
177 Trustees in this proceeding would result in increasing the amount due upon the principal of said bonds over the legal amount which the holders of said bonds are entitled to recover.

Trustees further aver that, in order to prevent delay, in the presentation to, and promulgation by, the Interstate Commerce Commission of a plan for the reorganization of the capital structure of the Debtor in this proceeding, the Court should speedily pass upon said issue and, further, Trustees state that, by reason of the provisions of the Federal Equity Rule No. 29, said issue of law raised by the interveners in this case, going to the whole or a material part of the cause of action stated in the intervening petition, may be called up and disposed of before final hearing at the discretion of the Court, and said issues should be speedily decided by the Court so that the reorganization of the Debtor's corporate structure shall not be unnecessarily delayed.

Wherefore, Trustees pray that said issue shall be passed upon without delay by the Court and that the Court shall order and decree that, under and by virtue of said Joint Resolution of the Congress of the United States of June 5, 1933, the so-called Gold Clause of said Mortgage, set up in

said intervening petition by said Trustees, shall be adjudged null and void.

Respectfully submitted,

L. W. BALDWIN,
GUY A. THOMPSON,
Trustees,

By Edw. J. White,
Counsel for Trustees.

Filed Apr. 10, 1934. Jas. J. O'Connor, Clerk.

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180 (Petition of Intervention of United States of America.)

To the Honorable, the Judges of the District Court of the United States for the Eastern District of Missouri:

Comes now your petitioner, the United States of America, by Louis H. Breuer, United States Attorney for the Eastern District of Missouri, and respectfully shows that:

I. The United States Commissioner of Internal Revenue has authorized and directed this petition to be filed on behalf of the United States.

II. At all times hereinafter mentioned your petition-
181 er, the United States of America, was, and now is, a corporation sovereign and body politic.

III. On March 31, 1933, the Missouri Pacific Railroad Company (hereinafter referred to as the Debtor) filed a petition in this Honorable Court, whereby the Debtor set forth that it was unable to meet its debts as they mature and sought to effect a plan of reorganization pursuant to Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, and prayed that an order be entered approving the petition as properly filed under said Section 77.

IV. On March 31, 1933, an order was entered in this proceeding by which the petition was approved as properly filed under said Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, and requiring the Debtor to file with the Clerk of this Court, within forty days after March 31, 1933, a statement of the assets and liabilities of the Debtor as of the close of business on March 31, 1933.

V. On May 15, 1933, the Debtor filed with the Clerk of this Court a statement of its assets and liabilities as of the

close of business on March 31, 1933, which statement sets forth to this Court that the Debtor had a tax liability of $3,433,324.83 as of that date.

VI. Your petitioner is interested in the above-entitled proceeding for the reason that on or about June 1, 1933, the Commissioner of Internal Revenue made an assessment of $3,893,531.59 against the Debtor for unpaid income taxes aggregating $2,801,051.60 for the calendar years 1920, 1924, 1925, 1926, 1928, and 1929, together with interest accrued thereon in the amount of $1,092,479.99; on or about
182 March 15, 1922, the Commissioner of Internal Revenue made an assessment of $264,854.14 against the Debtor for unpaid income taxes for the calendar year 1921, of which amount $62,572.37 remains unpaid; on or about June 1, 1933, the Commissioner of Internal Revenue made an assessment of $12,667.64 against the Debtor for unpaid income taxes for the calendar year 1930 in the amount of $11,182.65 and interest accrued thereon in the amount of $1,484.99. The aggregate amount of unpaid income taxes and interest assessed against the Debtor is $3,968,771.60, for which claims were duly filed, but said taxes and interest remain unpaid, together with interest accrued thereon.

VII. Your petitioner is advised and, therefore, charges, that under the provisions of Subdivision (c) of Section 205, Title 11, United States Code, creditors who desire to be heard on questions other than the permanent appointment of any trustee or trustees, or the proposed recommendation, approval, or confirmation of any plan of reorganization, shall file their petition for leave to intervene.

VIII. Your petitioner is informed and believes and, therefore, alleges, that numerous questions of vital and far-reaching importance will be raised in the above-entitled proceedings which may affect the tax claim of the United States of America.

Wherefore, your petitioner prays this Honorable Court to enter an order granting leave to intervene in this proceeding with the right to receive notice of hearings, to file motions, pleadings, and other papers, to be heard by testimony and/or by argument, and to take such other steps and pro-
183 ceedings in this cause as the petitioner may deem proper; and for such other further and different re-

lief as the nature and circumstances of this proceeding may require and as to the Court shall seem proper.

Dated this 11 day of April, 1934.

CLAUDE M. CROOKS,
Asst. United States Attorney for the
Eastern District of Missouri.

Filed Apr. 11, 1934. Jas. J. O'Connor, Clerk.

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184 (Answer of Trustees to Intervening Petition of United States of America.)

Come now the Trustees, L. W. Baldwin and Guy A. Thompson, and, for answer to the intervening petition of the United States Government, through the Commissioner of Internal Revenue, said Trustees respectfully present to the Court:

That claims have been filed by the Commissioner of Internal Revenue with the Special Master appointed by the Court in this cause, Marion C. Early, for income taxes due the United States, prior to the appointment of said Trustees, against certain of the Debtors in this cause.

That said claims, in due course, will be passed upon by said Special Master and the amount of prior income taxes due by said Debtors will be determined; but, until the determination by said Special Master of the amount of said
185 claims, said Trustees state that the intervention of the United States, through the Commissioner of Internal Revenue, is premature, as the nature and extent of the liens, if any, attaching thereon cannot be determined until the amount of said claims has been adjudicated by the Special Master in this cause.

Further answering, said Trustees deny that the Commissioner of Internal Revenue will be entitled to a lien upon any claim for income taxes due the United States Government against any of said Debtors prior to the lien of said Debtors' mortgages, or prior to the lien of State taxes subsequently accruing against the property of said Debtors being operated by said Trustees.

And, further answering, while the Trustees admit that the United States Government has a pecuniary interest, because of the pendency of said claims for income taxes against the Debtors, upon the issue raised by the Bankers Trust Company, Trustee under the St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions, First

Mortgage, that the bondholders, secured by said mortgage are entitled to be paid in gold coin of the United States of the weight and fineness obtaining May 1st, 1903, such Trustees deny that the United States, at this time, is entitled to intervene upon any other issue in this cause.

L. W. BALDWIN,
GUY A. THOMPSON,
Trustees.

By Edw. J. White,
Counsel for Trustees.

Filed Apr. 11, 1934. Jas. J. O'Connor, Clerk.

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188 Motion of Trustees for Advice Concerning Semi-Annual Interest Payments on Underlying Mortgages, and Interest and Principal Payments on Plaza-Olive Building Mortgage and Equipment Trust, Series F, and Interest Payments on Equipment Trusts, Series B, C and F, Totaling, Principal and Interest, $1,611,223.33, Due May 1, 1934, and Interest Due December 1, 1933, Upon Central Branch-Union Pacific Railway Company First Mortgage Four Per Cent Bonds, in the Sum of $32,560.00.

Come now L. W. Baldwin and Guy A. Thompson, Trustees in the above-entitled cause, and present to the Court:

189 That on May 1, 1933, semi-annual interest upon the following underlying mortgages and equipment trusts of Debtor, Missouri Pacific Railroad, will be due and payable, to-wit:

Third Mortgage, Missouri Pacific Railway	$ 76,560.00
Real Est. Secy. Mtge., Pacific Railroad of Missouri	19,975.00
First Mortgage, Plaza-Olive Building	3,932.50
River and Gulf Divisions, First Mortgage	690,960.00
Equipment Trust, Series B	36,575.00
Equipment Trust, Series C	39,000.00
Equipment Trust, Series F	147,262.50
	$1,014,265.00

That, in addition to said semi-annual interest payments upon said underlying mortgages and said equipment trusts

above described, there is a principal payment due May 1, 1934, upon Missouri Pacific Equipment Trust Series F,

in the sum of.....$595,000.00
and a principal payment upon the Plaza-Olive Building Mortgage in the sum of.... 1,958.33

making total principal and interest payments due May 1, 1934, of $1,611,223.33, and also interest in the sum of $32,560.-00, due December 1, 1933, upon the First Mortgage 4% Bonds of the Central Branch-Union Pacific Railway Company.

That heretofore, on Motion No. 14 herein of the Debtor, Missouri Pacific Railroad Company, the Court entered its Order No. 14, directing the payment of the interest due
190 on May 1, 1933, on said Missouri Pacific Railway Third Mortgage, and thereafter on Trustees' Motion No. 106, herein, the Court entered its Order No. 106 directing the payment of the interest due on November 1, 1933, on said Third Mortgage and that pursuant to said Orders of Court said interest was paid. Said motions and each of them and the averments thereof are by this reference thereto incorporated in and made a part hereof.

That heretofore on Motion No. 16 of Debtor, Missouri Pacific Railroad Company, the Court entered its Order No. 16 directing the payment of the interest due on May 1, 1933, on said Real Estate Security Mortgage, Pacific Railway of Missouri, and thereafter on Trustees' Motion No. 105 herein, the Court entered its Order No. 105, directing the payment of the interest on said Real Estate Security Mortgage due November 1, 1933, and that pursuant to said Orders of Court said interest was paid. Said motions and each of them and the averments thereof are by this reference thereto incorporated in and made a part hereof.

That heretofore on Motion No. 17 of Debtor, Missouri Pacific Railroad Company, the Court entered its Order No. 17 directing the monthly payments in acordance with the requirements of the Deed of Trust on the Plaza-Olive Building set forth in said Motion No. 17 and that pursuant to said Order of Court said monthly payments have been made. Said Motion and the averments thereof are by this reference thereto incorporated in and made a part hereof.

That heretofore on Motion No. 15 of the Debtor, Missouri Pacific Railroad Company, the Court entered its Order No. 15 directing the payments of interest due on May 1,
191 1933, on said River and Gulf Division First Mortgage and thereafter on Trustees' Motion No. 86, the Court

entered its Order No. 86 directing the payment of interest due November 1, 1933, on said River and Gulf Divisions First Mortgage Bonds at 4 per cent per annum, provided said sum should be received by holders of said bonds in full for all interest due upon said bonds up to November 1, 1933, and pursuant to said Orders of Court said interest was paid. Said Motions and each of them and the averments thereof are by this reference thereto incorporated in and made a part hereof.

That heretofore on Motion No. 12 of Debtor, Missouri Pacific Railroad Company, the Court entered its Order No. 12, directing the payment of the interest on Equipment Trust Certificates, Series B, C and F due May 1, 1933, and thereafter on Trustees' Motion No. 103 herein, the Court entered its Order No. 103, directing the payment of the interest due on said Equipment Trusts, Series B and C due November 1, 1933, and on Trustees' Motion No. 104, the Court entered its order No. 104 directing the payment of the interest on Equipment Trust, Series F, due November 1, 1933, and on Trustees' Petition No. 135 the Court, by its Order No. 135, directed the payment of accrued principal of said Equipment Trust, Series F. That pursuant to said Orders of Court said interest and said principal were paid. Said Motions and each of them and the averments thereof are by this reference thereto incorporated in and made a part hereof.

That under Order No. 25, entered by this Court on May 27, 1933, on Trustees' Petition No. 25, the said semi-annual interest due June 1, 1933, in the sum of $32,560.00, up-
192 on the Central Branch-Union Pacific Railway Company First Mortgage 4% Bonds was ordered paid; but the semi-annual interest due December 1, 1933, upon the Central Branch-Union Pacific Railway Company First Mortgage 4% Bonds was not paid by said Trustees, as said Trustees were having a study of the earnings of the property made prior to, and at, the time when said interest payment matured.

That as set forth in Motion No. 15, filed herein May 4, 1933, the $34,548,000.00, face value, St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions, First Mortgage 4% Bonds matured May 1, 1933.

That the mortgage securing said bonds is a first lien upon the property described in said motion, including the lines of railroad therein described, together with said equipment and collateral pledged as security thereunder.

That said mortgage is a first lien upon 781.47 miles of railroad, together with the mortgaged equipment and securities

in said motion set out, and the semi-annual interest, in the sum of $690,960.00 is due upon said bonds May 1, 1934.

That, as Trustees are informed and believe, there is a valuable equity in the property covered by said underlying mortgages and said equipment trusts which should be preserved for the benefit of the junior lien holders and the general creditors of the Debtors herein.

That Trustees have caused studies to be made of the earnings of the properties covered by the aforesaid underlying mortgages and all of said properties have earned the
193 interest due thereon, and that said interest is not needed to pay the cost of maintenance or operation of or for any improvements and betterments of the Debtor, Missouri Pacific Railroad Company.

That upon all of the equipment represented by said equipment trusts, 25%, in cash, of the total value of said equipment, was paid at the date of the execution of the leases to the Debtors; and, as Trustees are informed and believe, there is a valuable equity in said equipment, and all of said equipment is necessary to the lines of railroad being operated by said Trustees.

That four annual principal payments upon Equipment Trust, Series F, have heretofore been made, and the semi-annual interest payment maturing upon said Equipment Trust since the appointment of Trustees, in the sum of $160,650.00, has been made by said Trustees under previous order entered by this Court, all as aforesaid.

That the semi-annual interest, due May 1, 1933, and November 1, 1933, upon the River and Gulf Divisions First Mortgage 4% Bonds, of the St. Louis, Iron Mountain & Southern Railway Company, in the sum of $690,960.00 each date, was, as aforesaid, authorized by the Court and paid by the Trustees upon the condition that the interest due upon said bonds at the rate of four per cent should be received by the holders of said bonds in full of all interest due upon said bonds prior to May 1 and November 1, 1933; and all but a negligible portion of said interest payments upon said maturing coupons was accepted by said bondholders upon said condition.

That said underlying mortgages and equipment trusts bear the following rates of interest:

194 St. L. I. M. & S. Ry. Co. River and Gulf Divisions Bonds . . .. 4 %
Central Branch-Union Pacific Ry. Co. Bonds .... 4 %

Real Est. Security Mtge., Pacific R. R. of Missouri, Bonds	5 %
Plaza-Olive Building Bonds	6 %
Third Mortgage, Missouri Pacific Railway Company Bonds	4 %
Equipment Trust, Series B	5½%
Equipment Trust, Series C	5 %
Equipment Trust, Series F	4½%

That holders of Missouri Pacific First and Refunding Mortgage Bonds, aggregating over $200,000,000.00, have a lien junior to the lien of the mortgages above described, and the Trustees of said First and Refunding Mortgage Bonds and the Bondholders' Committee, representing said bondholders, have approved the payment of said semi-annual interest due December 1, 1933, upon said Central Branch-Union Pacific 4% Bonds, and the semi-annual interest payments and the principal payments due May 1, 1934, in the total sum of $1,611,223.33.

That Trustees are provided with funds sufficient to meet said interest and principal payments upon said underlying mortgage bonds, the said Plaza-Olive Building bonds and said equipment trusts, and that said funds are not needed for maintenance and operation or for betterments and improvements, but because of the fact that question has been raised by some of the creditors of said Debtors as to the propriety of making said principal and interest payments due May 1, 1934, and the $32,500 interest due December 1, 1933, on said Central Branch-Union Pacific First Mortgage 4%
195 Bonds, Trustees submit the above facts to the Court and pray that its order and judgment be entered herein, instructing said Trustees, whether or not said principal and interest payments upon said above-listed securities should be paid.

Said Trustees further pray that an order may be entered herein ordering all creditors of the Debtors and the subsidiary Debtors, and all other interested persons or parties to appear before the Court at a time and place to be fixed by the Court, to show cause why an order should not be entered herein, determining whether or not said principal and interest payments aforesaid, and said $32,500 interest due December 1, 1933, on said Central Branch-Union Pacific First Mortgage 4% Bonds should not be paid by the Trustees, when and where said parties may be heard, if so advised.

L. W. BALDWIN,
GUY A. THOMPSON.

Edw. J. White,
Counsel for Trustees.

196 United States of America,
Eastern Judicial District of Missouri,
City of St. Louis, Missouri—ss.

L. W. Baldwin and Guy A. Thompson, being duly sworn, upon their oaths severally say that they have read the above and foregoing petition, and that the facts therein stated are true, as they verily believe.

L. W. BALDWIN,
GUY A. THOMPSON.

Subscribed and sworn to before me this 12th day of April, 1934.

My commission expires June 26, 1937.

(Seal)

GEO. W. COLLINS,
Notary Public, City of St. Louis, Mo.

Filed Apr. 16, 1934. Jas. J. O'Connor, Clerk.

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200 (Order Directing Creditors, etc., to Show Cause Why Interest Should Not Be Paid.)

Upon the petition of L. W. Baldwin and Guy A. Thompson, Trustees for the Debtors in the above-entitled proceeding, for advice respecting interest and principal payment due May 1, 1934, upon the following securities of Debtor, Missouri Pacific Railroad Company:

201 Interest:

Third Mortgage, Missouri Pacific Railway	$ 76,560.00
Real Est. Secy. Mtge., Pacific Railroad of Missouri	19,975.00
First Mortgage, Plaza-Olive Building	3,932.50
River and Gulf Divisions, First Mortgage	690,960.00
Equipment Trust, Series B	36,575.00
Equipment Trust, Series C	39,000.00
Equipment Trust, Series F	147,262.50
	$1,014,265.00

Principal:

Plaza-Olive Building Mortgage	$ 1,958.33
Equipment Trust, Series F	595,000.00
	$ 596,958.33
Total, Principal and Interest due May 1, 1934	$ 1,611,223.33

also the semi-annual interest payment, due December 1, 1933, on the Central Branch-Union Pacific Railway Company First Mortgage 4% Bonds, in the sum of $32,560.00, and the Court being duly advised in the premises, it is, on motion of Edward J. White, Counsel for said Trustees,

Ordered that all creditors of the Debtors herein, and all other interested persons, firms and corporations show cause, if any they can, before me at a hearing to be held in the Court Room of the United States District Court, Custom House Building, St. Louis, Missouri, on the 4th day of May, 1934, at ten o'clock in the forenoon, or as soon thereafter as Counsel can be heard:

202 Why an order should not be entered herein authorizing the semi-annual interest payments due May 1, 1934, upon the following securities of the Debtor, Missouri Pacific Railroad Company:

Third Mortgage, Missouri Pacific Railway...$	76,560.00
Real Est. Secy. Mtge., Pacific Railroad of Missouri	19,975.00
First Mortgage, Plaza-Olive Building.....	3,932.50
River and Gulf Divisions, First Mortgage....	690,960.00
Equipment Trust, Series B	36,575.00
Equipment Trust, Series C	39,000.00
Equipment Trust, Series F	147,262.50
	$1,014,265.00
and the semi-annual interest payment, due December 1, 1933, on the Central Branch-Union Pacific Railway Company First Mortgage 4% Bonds, in the sum of.....$	32,560.00
and the following principal payments due May 1, 1934:	
Plaza-Olive Building Mortgage .....$	1,958.33
Equipment Trust, Series F	595,000.00
$	596,958.33

It Is Further Ordered that due and timely service of this Order to show cause be made by

(a) Publishing a notice of said hearing, once a week, for two consecutive weeks in one daily newspaper, published and in general circulation, in each of the Cities of St. Louis and Kansas City, Missouri, Omaha, Nebraska, Houston,
203 Texas, Little Rock, Arkansas, New Orleans, Louisiana, Cleveland, Ohio, and New York, New York; and

(b) By mailing a copy of said notice to the respective Trustees of deeds of trust, trust indentures, mortgages, equipment trusts, agreements or pledges of collateral securing bonds, funded obligations or equipment trust certificates of the respective Debtors, and to the Reconstruction Finance Corporation and the Railroad Credit Corporation, and to the Chairman of all Bondholders Committees and Counsel for such Committees and the Collector of Internal Revenue of the United States.

C. B. FARIS,
United States District Judge.

Dated April 14, 1934.

Filed Apr. 16, 1934. Jas. J. O'Connor, Clerk.

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204 (Record Entry of Filing of Answer of United States of America to Petition of Bankers Trust Company, et al., for Leave to Intervene.)

April 28, 1934.

Answer of the Intervener, United States of America, to petition of Bankers Trust Company and William H. Bixby, Trustees, etc., filed by leave.

205 (Answer of United States of America to Petition of Bankers Trust Company, et al., for Leave to Intervene.)

Comes Now the United States of America by Angus D. MacLean, Assistant Solicitor General, and Harry C. Blanton, United States Attorney for the Eastern District of Missouri, acting under the direction of the Attorney General, having secured permission of the Court by Order of April 5, 1934, to intervene specially in this cause in order to assert its rights therein and to defend against the rights asserted by Debtor and the Trustees of their mortgage in so far as same shall affect the rights of the Government of the United States, for answer to the petition filed by Bankers
206 Trust Company and William H. Bixby, as Trustees, of the St. Louis, Iron Mountain and Southern Railway Company, River and Gulf Divisions, First Mortgage, due May 1, 1933, for leave to intervene, etc., dated December 4, 1933, and presented to this Court on December 27, 1933, says:

1. It admits the allegations contained in paragraphs I, II, III, IV, V and VI of said petition.

2. As to the allegations contained in the first sentence of paragraph VII of said petition, it avers that it has no knowledge or information sufficient to form a belief. It denies the allegation contained in the second sentence of paragraph VII.

3. It denies that the Trustees of the mortgage have acquired and now have a valid existing first lien as alleged in paragraph VIII of said petition. As to the other allegations contained in paragraph VIII of said petition, it avers that it has no knowledge or information sufficient to form a belief.

4. It admits the allegations contained in paragraphs IX and X of said petition.

5. It admits the allegations of paragraph XI of said petition but without prejudice to any right which it may have to controvert any allegation in petitions numbered, respectively, 1, 15, 57, and 86, or to appeal from, or move to vacate or modify anything contained in, orders numbered, respectively, 1, 15, 40, 57, and 86.

6. As to the allegations contained in paragraphs XII and XIII of said petition, it avers that it has no knowledge or information sufficient to form a belief.

7. Further answering, your intervener states that the
207 primary purpose of Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, under which the Court acquired jurisdiction in this cause, is to enable the debtor to effect a plan of reorganization; that Petition No. 1 contained such allegation and that the Court by Order No. 1 so found; that the impounding, segregation, sequestration and paying over to the Trustees of the St. Louis, Iron Mountain and Southern Railway Company, River and Gulf Divisions, First Mortgage, from time to time, as prayed for in said petition, of said rents, issues, profits, tolls and other income derived or to be derived from time to time from the operation of the property alleged to be subject to the lien of the aforesaid First Mortgage would hinder, impede, obstruct and delay the orderly preparation, promulgation and consummation of a plan of reorganization for the Debtor; and that said petition is in effect the commencement of or continuance of a judicial proceeding to enforce the alleged lien of said First Mortgage against the estate of the Debtor in a manner contrary to and in conflict with Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy.

8. It alleges that the payment of the mortgage bonds and interest in gold or in other money at its market value in gold would unlawfully deplete the assets of the Debtor to the detriment of the lawful rights, priorities and preferences of the United States as to unpaid income tax assessments against the Debtor as more particularly shown by the intervening petition of the United States heretofore filed in these proceedings.

9. It alleges that the 73d Congress, among other
208 measures dealing with the emergency then and now existing, adopted Public Resolution No. 10 (a joint resolution to secure uniform value to the coins and currencies of the United States) as follows:

"Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

"Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it

"Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such pro-
209 vision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

"(b) As used in this resolution, the term 'obligation' means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term 'coin or currency' means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve Banks and national banking associations.

"Sec. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled 'An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes', approved May 12, 1933, is amended to read as follows:

" 'All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight.' "

210 That said resolution, which was approved June 5, 1933, is in full force and effect, and it not only prohibits payment of the sums secured by the aforesaid mortgage in gold coin or in other than lawful money of the United States but expressly declares to be against public policy the clause or provision relied upon by the Trustees of the aforesaid mortgage as authorizing and requiring payment "in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903."

10. It alleges that the 73d Congress, among other measures dealing with the emergency then and now existing, enacted Public Act No. 1, which was approved March 9, 1933, and, except as may be amended by the Act of Congress referred to in paragraph "11" hereof, is in full force and effect; that said Act authorized the President of the United States to regulate and prohibit, among other things, transactions in foreign exchange, transfers of credit between or payments by banking institutions as defined by the President, and the export, hoarding, melting or earmarking of gold or silver coin or bullion or currency, and confirmed such ac-

tions theretofore taken by the President; and authorized the Secretary of the Treasury to require any or all persons to deliver to the Treasurer of the United States any or all gold coin, gold bullion and gold certificates owned by such persons; that consonant with and pursuant to said Act orders were issued by the President on March 6, March 10, April 5, April 20, August 28, August 29, October 25, 1933, and January 12, 1934, and by the Secretary of the Treasury on December 28, 1933, January 11 and January 15, 1934,
211 regulating and prohibiting the ownership, export, hoarding, melting or earmarking of gold coin or bullion or currency; that such orders prevent, and were intended to prevent, the payment of the sums secured by the aforesaid mortgage "in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903".

11. It alleges that the 73d Congress enacted the Gold Reserve Act of 1934, which was approved January 30, 1934, and is in full force and effect; that said Act prohibits the coinage of gold and the payment or delivery of gold coin by the United States, and requires that all gold coin of the United States be withdrawn from circulation; that said Act requires the Secretary of the Treasury, with the approval of the President, to prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked; that pursuant to said Act, the Secretary of the Treasury with the approval of the President, on January 30 and 31, 1934, issued provisional regulations prescribing the conditions under which such acquisition and disposition of gold might be effected; that said Act and said regulations prohibit payment of the sums secured by the aforesaid mortgage "in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903".

12. In order to effect an orderly preparation and consummation of a plan of reorganization for the debtor under Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, which is the primary purpose of said Section 77, under which these proceedings are now pend-
212 ing, it is necessary that the court determine without delay whether or not the debt alleged to be owing on account of the principal of the bonds and the interest now or hereafter due, secured by the aforesaid mortgage and on account of the expenses of the Trustees and of the compensation of the aforesaid petitioner and for the services of all counsel, agents and employees properly engaged and em-

ployed by them, may be satisfied by the payment of the face amount of said debt in lawful money of the United States, since until this determination is made, the nature and extent of the claims and interests of the various creditors cannot be definitely ascertained.

Wherefore, in answer to the prayers of said petition of the aforesaid Trustees, your intervener prays as follows:

1. That prayers Nos. 2, 3, 4, 5, 6 and 7 of said petition be denied, pending full determination of the issues herein.

2. That the Court determine without delay that the debt alleged to be owing on account of the principal of the bonds and the interest now or hereafter due, secured by the aforesaid mortgage and on account of the expenses of the Trustees and of the compensation of the aforesaid petitioner and for the services of all counsel, agents and employees properly engaged and employed by them, may be satisfied by the payment of the face amount of said debt in lawful money of the United States.

3. That the Court direct that no funds or moneys whatsoever be paid to petitioner before the rights of the
213 United States as to payment of taxes have been finally determined and adjudicated.

ANGUS D. MacLEAN,
Assistant Solicitor General.

HARRY C. BLANTON,
United States Attorney.

April ....., 1934.

United States of America,
State of Missouri,
City of St. Louis,
Eastern Division,
Eastern Judicial District—ss:

The undersigned, Harry C. Blanton, being duly sworn, deposes and says that he is United States Attorney for the Eastern District of Missouri; that as such officer he is authorized to execute the foregoing answer; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to matters

therein stated upon information and belief, and as to those matters he believes it to be true.

HARRY C. BLANTON.

Subscribed and sworn to before me this April 28", 1934.

JAS. J. O'CONNOR,
(Seal) Clk. U. S. Dist. Ct. E. J. D. Mo.

Filed Apr. 28, 1934. Jas. J. O'Connor, Clerk.

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217 Record Entry of Setting Cause for Hearing on Validity of Gold Clause, etc.

(May 1, 1934.)

Hearing on impounding of income and validity of gold clause on petition of Bankers Trust Company and William H. Bixby as Trustees, Under St. Louis, Iron Mountain and Southern First Mortgage and the answers of trustees of debtor, United States of America and Reconstruction Finance Corporation set for May 11, 1934, at ten o'clock a. m.

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218 Record Entry of Postponement of Hearing on Gold Clause Validity, etc.

(May 4, 1934.)

On application of counsel, petition of Bankers Trust Company, et al., and answers filed hereto, heretofore set for May 11, 1934, passed for hearing to May 25, 1934 at ten o'clock a. m. Proof of publication of notice of hearing on motion of trustees for advice concerning interest payments on underlying mortgages, etc., as well as verified answer or return of Protective Committee for the Holders of Missouri Pacific Railroad Company First and Refunding Mortgage 5% Gold Bonds, and answer of Guaranty Trust Company of New York, et al., Trustees, under First Refunding Mortgage of Missouri Pacific Railroad Company, dated April 2, 1917, to said motion of trustees for instructions, filed by leave. Said motion of trustees for instructions argued and submitted on briefs to be hereafter presented.

219-220 (Order of Submission of Motion of Bankers Trust Company, et al., to Amend Their Petition.)

May 18, 1934.

Oral motion of Bankers Trust Company and W. H. Bixby as Trustees of St. Louis Iron Mountain and Southern Railway Co. River and Gulf Division First Mortgage for leave to amend their petition dated December 4, 1933, in certain respects set out in memorandum this day filed, argued and submitted on briefs to be hereafter presented.

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221 Answer of Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees Under the First and Refunding Mortgage of Missouri Pacific Railroad Company, Dated April 2, 1917, to Petition of Bankers Trust Company and William H. Bixby, Trustees of St. Louis Iron Mountain & Southern Railway Company, River and Gulf Divisions, First Mortgage, for Leave to Intervene, for an Order Impounding the Income Subject to the Mortgage, and for Other Relief.

222 Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company dated April 2, 1917, by their counsel Davis Polk Wardwell Gardiner & Reed, make the following answer to the petition of Bankers Trust Company and William H. Bixby, as Trustees of The St. Louis Iron Mountain & Southern Railway Company, River and Gulf Divisions, First Mortgage, due May 1, 1933 (being Petition No. 173):

(1) They admit the allegations contained in paragraphs numbered I, II, XII and XIII.

(2) They deny that they have any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs numbered III, IV, V, VI, VII, VIII, IX and X.

(3) They admit the allegations contained in paragraph numbered XI, except that they allege that the petitioners are without power or right to controvert any allegation in any such petition, or to appeal from or move to vacate or modify any such order.

(4) With respect to Prayer No. 3 of the petition, the First and Refunding Mortgage Trustees allege that any im-

pounding of the rents, issues, profits, tolls and other income accruing from time to time from the properties subject to the lien of the said River and Gulf Divisions, First Mortgage, or any segregation or sequestration thereof, would operate adversely to the interests of the debtor, of other creditors, and of the Trustees of the First and Refunding Mortgage; that the earnings of the debtor are now subject to determination under a formula which adequately provides for de-
223 termining the earnings from the properties covered by the said River and Gulf Divisions, First Mortgage; that any actual impounding, sequestration or segregation of said earnings would prevent the Trustees of the debtor from using such earnings where they are most needed in the preservation and operation of the debtor's properties, and would adversely affect and seriously hamper the development of a reorganization plan and thus would be contrary to the intent and purpose of Section 77 of the Bankruptcy Act.

(5) With respect to prayer No. 4 of the petition, the First and Refunding Mortgage Trustees allege that it is neither necessary nor important to the progress of these proceedings that there be a decision at this time upon the rights of the petitioners or the bondholders whom they represent to have such obligations as may be found owing to them paid in gold coin of the standard described in the petition, and the First and Refunding Mortgage Trustees join in the alternative of petitioners' prayer and request that any determination with respect to the right of the petitioners to payment in such gold coin be reserved without prejudice to the rights of any party; the First and Refunding Mortgage Trustees further deny that petitioners are entitled to a formal judgment or decree of this Court substantially equivalent to an action to foreclose the Mortgage, or that the amount specified in such judgment or decree be determined to bear interest at the rate of six per cent. per annum, the First and Refunding Mortgage Trustees alleging that the petitioners, if entitled to any judgment for a specific sum, are not en-
224 titled to interest on any amount specified in such judgment at a greater rate than four per cent. per annum.

Wherefore, The First and Refunding Mortgage Trustees submit their rights and the rights of the holders of the First and Refunding Mortgage Bonds to this honorable Court and

pray that such rights may be ascertained, determined and decreed.

Dated May 16th, 1934.

DAVIS POLK WARDWELL
GARDINER & REED,
Counsel for First and Refunding
Mortgage Trustees,
Office & Post Office Address,
15 Broad Street,
Borough of Manhattan,
City of New York.

State of New York,
County of New York—ss.

Arthur E. Burke, being duly sworn, deposes and says that he is an officer, to-wit, the Corporate Trust Officer of Guaranty Trust Company of New York; that he has read the foregoing answer and knows the contents thereof; that the allegations contained therein in respect to the acts of Guaranty Trust Company of New York are true to his own
225 knowledge, and that as to all other allegations contained therein he is credibly informed and believes that the same are true.

ARTHUR E. BURKE.

Subscribed and sworn to before me this 16th day of May, 1934.

(Seal)

W. J. BURNHAM,
Notary Public.

Kings Co. Clerk's No. 156, Reg. No. 6168

N. Y. Co. Clerk's No. 536, Reg. No. 6-B-288

Queens Co. Clerk's No. 436, Reg. No. 2323

Certificate filed in Westchester County

Certificate filed in Nassau County

Commission expires March 30, 1936.

No objection to the filing of this answer.

ALEXANDER & GREEN,
FORDYCE, WHITE, MAYNE
& WILLIAMS,
Counsel for Bankers Trust Co. and
Wm. H. Bixby, Trustees of River &
Gulf Mtge.

Filed May 21, 1934. Jas. J. O'Connor, Clerk.

229 (Order Denying Motion of Bankers Trust Company, et al., to Amend Their Petition.)

May 22, 1934.

Motion of Bankers Trust Co., et al., as trustees of St. Louis, Iron Mountain and Southern Railway Co., River and Gulf Division, First Mortgage, for leave to amend their bill of intervention denied for reasons assigned in oral opinion this day announced.

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230 (Record Entry of Filing of Opinion on Motion of Bankers Trust Company, et al., to Amend Their Petition.)

May 24, 1934.

Memorandum of oral opinion of the Court on motion of Bankers Trust Co., et al., trustees, etc., for leave to amend their bill of intervention, filed.

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231 (Opinion of District Court on Denial of Motion of Bankers Trust Company, et al., to Amend Their Petition.)

Faris, J.

In December, 1933, the Bankers Trust Company, and another, Trustees in a certain mortgage dated May 1, 1903, filed by leave their petition in intervention, wherein, inter alia, they pray, among other relief, this, "that the lien of the mortgage be determined to be in the sum of $34,548,000, with interest thereon from May 1, 1933, at the rate of six per cent. per annum * * * and that such sum and interest be determined to be payable in gold coin of the United States, of the standard weight and fineness prevailing on May 1, 1903."

Thereupon, and in due time, the Trustees of Debtor herein, and divers others lawfully interested in the determination of what I may call the gold clause of interveners' mortgage, filed their answers to the bill of the Trustees in the mortgage of May 1, 1903, in which they joined issue with said Trustees last-named and asked for a speedy determination of the question whether or not payment of said mortgage, under the terms thereof, should be made in gold, and, among other things, prayed, after setting up the facts, thus (I take
232 the prayer of the Trustees' answer as a type, merely, of other answers filed by other parties interested in the matter):

"With respect to the prayer of said intervening petition that the sum secured by said mortgage with interest thereon be determined to be payable in gold coin of the United States of the standard and weight and fineness prevailing on May 1, 1903, as provided in said mortgage and in the bonds secured thereby, Trustees aver that said provisions of said mortgage and said bonds are void and of no effect for the reason that the Congress of the United States, under Joint Resolution of the House and Senate of the United States, adopted June 5, 1933, provided that promises to pay dollars in gold coin could be satisfied by the payment of dollars in any other form, and said Joint Resolution set aside and rendered nugatory said provisions of said Mortgage and bonds, and, to enforce said provisions against the Debtor or Trustees in this proceeding would result in increasing the amount due upon the principal of said bonds over the legal amount which the holders of said bonds are entitled to recover.

Trustees further aver that, in order to prevent delay, in the presentation to, and promulgation by, the Interstate Commerce Commission of a plan for the reorganization of the capital structure of the Debtor in this proceeding, the Court should speedily pass upon said issue, and, further, Trustees state that, by reason of the provisions of Federal Equity Rule No. 29, said issue of law raised by the interveners in this case, going to the whole or a material part of the cause of action stated in the intervening petition, may be called up and disposed of before final hearing at the discretion of the Court, and said issues should be speedily decided by the Court so that the reorganization of the Debtor's corporate structure shall not be unnecessarily delayed.

Wherefore, Trustees pray that said issue shall be passed upon without delay by the Court and that the Court shall order and decree that, under and by virtue of said Joint Resolution of the Congress of the United States of June 5, 1933, the so-called gold clause of said mortgage, set up in said intervening petition by said Trustees, shall be adjudged null and void."

Thereafter, pursuant to authority, as is alleged, of Rule 29, of the Rules in Equity, the issue so raised by the petition of interveners, and by the above answer of the Trustees of Debtor and others, was specially set for hearing on May 11, 1934. Later, and by request and consent of counsel
233 for interveners, the matter was postponed and reset for May 25, 1934.

Thereafter, and on May 18, 1934, counsel for the interveners again came into court, at a stated session thereof and asked leave to amend their bill of intervention by presently striking therefrom, without prejudice, all reference to the gold clause in their said mortgage in which they are Trustees, as, also, their prayer of relief under such gold clause.

The Trustees of the Debtor, the United States, and others interested as creditors of Debtor, or otherwise, appeared and opposed the right of interveners to so amend their bill, save upon the condition, to which interveners refused to accede, that such amendment be with prejudice. And thus stand the facts on which the right to amend vel non, is before me.

Rule 28 of the Rules in Equity, after reciting, in effect, that before joinder of issue the right of a complainant to amend is a right as of course. This Rule then proceeds to say this:

"After pleading filed by any defendant, plaintiff may amend only by consent of the defendant, or leave of the court or judge."

In passing, however, it may be said that interveners urge that this matter has no relation to an equitable proceeding, and therefore that the rule I have just quoted does not apply. I am of opinion that interveners' learned counsel, in assuming this position, fall into serious error.

Lately, in full effect, it was held by the Supreme Court of the United States, that matters of bankruptcy are equitable in practice and procedure, and that the word "law" mentioned in Section 1 of the original Bankrupt Act refers only to criminal matters and phases (Local Loan Company vs. Hunt, decided April 30, 1934,) as witness this excerpt from the above opinion:

234 "Courts of bankruptcy are constituted by Sections 1 and 2 of the Bankruptcy Act (U. S. C. Title 11, Sections 1 and 2) and are invested 'with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings', and so forth. The words 'at law' were probably inserted to meet Clause (4) of Section 2, which empowers such courts to arraign, try and punish certain designated persons for violation of the Act (cases cited). But otherwise courts of bankruptcy are essentially courts of equity and their proceedings inherently proceedings in equity."

Obviously, the language above quoted from Rule 28, does not mean that either the defendant or the Court may arbitrarily refuse or deny permission to complainant to amend. The right, or the lack thereof, in complainant to amend is yet to be determined upon what are fairly well-settled principles of both law and equity; and it is, in my opinion, wholly germane in principle to the right of a plaintiff at law, and a complainant in equity, to dismiss or discontinue a cause of action sounding in either law or equity. This general rule is well-stated in a quotation found in the case of State Ex Rel. vs. Anderson, 269 Mo., l. c., 388, thus:

"While a plaintiff may dismiss any claim when such dismissal will not prejudicially affect the interests of defendant, he will not be permitted to dismiss, to discontinue, or to take a non-suit, when by so doing he will obtain an advantage and defendant will be prejudiced or oppressed, or deprived of any just defense."

Coming from the genus to the species, from the general to the particular, nothing is better settled than that a plaintiff may not, without his adversary's consent, dismiss his petition, bill or claim, after joinder of issue, when in such joinder defendant has set up a counter-claim at either law or in equity. So universal is the rule above announced, that citations of cases would be both useless and a burden to the page on which they were written.

Here, interveners ask, in effect, that the Court decree that their mortgage be paid in gold coin of the weight
235 and fineness current and prevailing on May 1, 1903, or in lieu thereof, in effect, that the decree finally entered, order that such mortgage be satisfied only upon payment of such sum in current money as shall equal the value now of $34,548,000 gold dollars, as of May 1, 1903.

Defendants, Trustees of the Debtor, and others, come and oppose this prayed decree, and ask as relief from the gold clause of the mortgage in controversy, that such clause be held null and void and cancellation thereof be adjudged by this Court under the practice of Rule 29, supra.

Is such relief as pleaded and prayed for by defendants, Debtor, and others, sufficient, to prevent an amendment, over defendants' objections, which, for the present totally withdraws the issue of the validity vel non, of the gold clause of the mortgage, from this case?

I am of the opinion that it is. The cases below cited seem to me to bear out the conclusion I have reached. (Detroit

vs. Detroit Railway Company, 55 Fed., 569; Kishi vs. Oil Company, 298 Fed., l. c. 221; Sauter vs. Bank, 8 Fed. (2d) 121; Ex Parte, Skinner & Eddy Corporation, 265 U. S., 86; Small vs. Peters, 104 Fed. 401; Hat-Sweat Manufacturing Company vs. Waring, 46 Fed., 87; Clifford vs. Tomb, 21 Fed. (2d) 892; Scholl Manufacturing Company vs. Rogers, 51 Fed. (2d) 971; United Motor Service vs. Tropic-Aire, 57 Fed. (2d) 479; Pullman etc. Company vs. Transportation Company, 171 U. S., 138; Stevens vs. Railroad, 4 Fed. (2d) 97; Automotive etc. Company vs. Wolverine etc. Company, 15 Fed. (2d) 745; Page vs. Arkansas etc. Corporation, 53 Fed. (2d) 27; Callahan vs. Hicks, 90 Fed., 539; Gilbert Company vs. United Electrical Manufacturing Company, 33 Fed. (2d) 760.)

Upon hearing and argument it was urged by interveners that no present emergency exists which calls for any speedy determination of the validity of the gold clause of the
236 mortgage in controversy. I cannot agree to this argument.

Well-nigh all, if not all, of the secured bonded indebtedness of Debtor, aggregating in excess of $438,000,000 in the bonds evidencing such debts, have provisions for payment thereof, similar in all respects to those here under discussion. I cannot avoid the conclusion that it is vitally important to speedily determine whether the Debtor, in its Plan for Reorganization, must make provision for the payment of $439,000,000 (in round numbers), say, or some $743,000,000, which may well constitute the difference between solvency and insolvency.

Moreover, it is fairly plain that under that provision of the Amendment to the Bankruptcy Act, which controls the practice here, and which is found in Clause (e) of Section 205, Title 11, U. S. C., thirty-four per cent. of the stockholders may effectually block reorganization of the Debtor, until the fact of insolvency, vel non, is ascertained. To determine the above fact, absent knowledge of the sum of secured indebtedness, would require the expenditure of a huge sum in money and years of time. The worth and value of every claim against the Debtor, whether secured or unsecured, depends directly on the final adjudication of the question here indirectly in issue. So, it seems to me that every consideration demands that the validity of the gold clause of these bonds should speedily be gotten out of the way, or, at least, on the way out.

It follows, I think, both upon the many cases I have cited and upon the reason of the thing, that interveners should be denied the right to temporarily amend their bill as requested, and so it is ordered.

St. Louis, Missouri, May 22, 1934.

Endorsed: Filed May 24, 1934. Jas. J. O'Connor, Clerk.

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237 Record Entry of Submission of Question of Validity of Gold Clause.

(May 25, 1934.)

Petition of Bankers Trust Co., et al., as trustees under St. Louis, Iron Mountain and Southern First Mortgage in so far as the same relates to impounding of income and validity of gold clause, heard, argued and submitted.

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238 (Order Concerning Payments of Interest, etc.)

Order Concerning Semi-annual Interest Payments on Underlying Mortgages of Missouri Pacific Railroad Company, Principal Payments on the Plaza-Olive Building Mortgage and Equipment Trust, Series F, and Interest Payments on Equipment Trusts, Series B, C and F of the Missouri Pacific Railroad Company,

Totalling, Principal and Interest.....$1,611,223.33, Due May 1, 1934;

and

239 Interest Due December 1, 1933, Upon Central Branch-Union Pacific Railway Company First Mortgage Four Per Cent Bonds in the sum of .....$ 32,560.00

Upon reading the motion of the Trustees L. W. Baldwin and Guy A. Thompson, filed April 16, 1934, asking for advice concerning the semi-annual interest on the following underlying mortgages and equipment trusts of the Debtor, Missouri Pacific Railroad Company, due May 1, 1934, to-wit:

Third Mortgage, Missouri Pacific Railway.....$	76,560.00
Real Estate Security Mortgage, Pacific Railroad of Missouri .....$	19,975.00
First Mortgage, Plaza-Olive Building.....$	3,932.50
River and Gulf Divisions, First Mortgage....$	690,960.00
Equipment Trust, Series B .....$	36,575.00
Equipment Trust, Series C .....$	39,000.00
Equipment Trust, Series F .....$	147,262.50
	$1,014,265.00

also

principal payments due May 1, 1934, upon Missouri Pacific Equipment Trust, Series F, in the sum of .....$ 595,000.00

and the

Plaza-Olive Building mortgage, in the sum of..$ 1,958.33

making a total of principal and interest payments due May 1, 1934, of .....$ 1,611,223.33

240 and also

Interest, due December 1, 1933, upon the First Mortgage Four Per Cent Bonds of the Central Branch-Union Pacific Railway Company, in the sum of .....$ 32,560.00

and

it appearing to the Court that, heretofore, to-wit: on April 14, 1934, the Court entered its Order, No. 178, upon said motion, directing that notice should be given once a week, for two consecutive weeks, in the newspapers set forth in said Order, and also by mailing copy of said notice to the respective trustees of deeds of trust, trust indentures, mortgages, equipment trust agreements or pledges of collateral securing bonds, funded obligations and equipment trust certificates of said Missouri Pacific Railroad Company and to the Reconstruction Finance Corporation, the Railroad Credit Corporation, the Chairmen of all Bondholders' Committees, Counsel for said Committees, and the Collector of Internal Revenue of the United States;

and

it appearing from the evidence submitted to the Court that notices in pursuance to said Order to Show Cause have been duly given, as provided for in said Order, notifying all the trustees, creditors and counsel of aforesaid creditors named in said Order;

and

it further appearing from the evidence introduced in said cause that the Commissioner of Internal Revenue has filed claims for income taxes due against said Debtor, Mis-
241 souri Pacific Railroad Company, aggregating over $3,000,000.00, but that said claims are still pending before the Master, and that, included in said claims, are several

disputed items, involving over $2,000,000.00 of said claims for income taxes against said Debtor;

and

it further appearing from the admissions entered of record that Trustees are provided with cash sufficient to pay operating expenses and for all betterments and improvements needed during the year 1934, and also any income taxes which may be subsequently allowed in this cause in favor of the United States Government against said Debtor, Missouri Pacific Railroad Company, and that said Trustees have no immediate use for the funds necessary to pay said principal and interest payments due May 1, 1934, in the total sum of $1,611,223.33, and the interest payment due December 1, 1933, upon the Central Branch-Union Pacific Railway Company's First Mortgage Bonds in the sum of $32,560;

and

the Court further finding that the liens of the mortgages and equipment trusts upon which said principal and interest payments are due are valid, subsisting liens, prior to the lien, if any, which shall be adjudged in favor of the Commissioner of Internal Revenue upon said claim for income taxes due the United States Government:

It Is, Therefore, Considered, Ordered and Adjudged by the Court:

That said principal and interest payments due May 1, 1934, in the total sum of $1,611,223.33, should be paid by
242 said Trustees, and all of the same are hereby ordered paid, provided that the sum of $690,960.00, interest payment due May 1, 1934, upon the River and Gulf Divisions First Mortgage Four Per Cent Bonds of the St. Louis, Iron Mountain & Southern Railway Company, at the rate of four per cent, shall be received by the holders of said bonds in full of all interest due upon said bonds prior to May 1, and November 1, 1933, and up to May 1, 1934; also that said $32,560, interest due December 1, 1933, upon Central Branch-Union Pacific Railway Company bonds shall be paid.

And it appearing to the Court, from the evidence introduced by the Trustees, that there is a question whether the Guaranty Trust Company, trustee of the First and Refunding Mortgage bonds of the Debtor, is entitled to receive the interest upon $872,000.00 of said Central Branch-Union Pacific Railway Company's First Mortgage Four Per Cent Bonds, which, it claims, have been legally pledged with it, as trustee of said mortgage;

The Trustees are Ordered, until the decision by this Court of the said issue as to the validity of said pledge, to withhold payment of interest due upon said $872,000.00 of said Central Branch-Union Pacific Railway Company bonds, the question of the validity of said pledge, which has been raised by the Trustees herein, to be withheld by the Court until the further order of the Court thereon.

C. B. FARIS,
Judge, United States District Court.

Filed Jun. 9, 1934. Jas. J. O'Connor, Clerk.

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246 (Record Entry of Filing of Opinions on Motions of Trustees, etc.)

June 20, 1934.

Memorandum opinion of the Court on motions of trustees of debtor and others to construe, under Rule 29, Gold Clause of Bonds pleaded by Bankers Trust Company, et al., special interveners, filed.

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247 Opinion on Motions of Trustees of Debtor and Others, to Construe, Under Rule 29, Gold Clause of Bonds, Pleaded by Bankers' Trust Co., et al., Special Interveners.

The sole question presented here is the validity, vel non, of what I shall call for brevity and convenience, the gold clause of the bonds secured by the mortgage in which interveners are trustees. This clause provides that these bonds shall be payable in "gold coin of the United States of the present standard of weight and fineness". The word present, refers to the date of issue of the bonds, which was May 1, 1903.

248 Interveners contend, and their numerous adversaries, including the trustees of the Debtor, deny, that Public Resolution 10, now Sec. 463 Title 31, U. S. C., passed by the Congress on June 5, 1933, is invalid, for that it offends against the Federal Constitution.

No formal pleading points out the part or clause of the organic law, which stand, as a prohibiting monitor to oppose the validity of the above Resolution. But the trend of the argument convinces, that the "due process" provision of the 5th Amendment must have been held in mind by counsel for interveners.

So far as is presently pertinent here Section 463 supra reads thus:

"Every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts."

A few words of almost ancient history may add faint light to the case. Prior to the Civil War, it was a common custom to write into obligations for the payment of money, even into promissory notes, the provision that the debt should be payable in specie. The reason for this precaution was that much of the money, then in circulation, consisted of
249 paper promises to pay, issued by so-called State banks. (See, Bronson vs. Rodes, 7 Wall., 229). These were notorious for the ease with which they failed. It is not surprising then, that the payee in an obligation should have endeavored to guard against payment in possibly worthless paper money.

In the fifteen-year period following the Civil War, and until the so-called resumption of specie payment in 1879, provisos for the payment in specie became fewer. There were probably two reasons for this. First, the enaction by the Congress of the Legal Tender Acts, and the decision of the Supreme Court in the Legal Tender Cases, and second, because few men were so simple as to contract for payment in gold or specie, which reached at one time in the fifteen-year period, a premium, over the greenbacks of the era, of $2.85, or a little more. That is, it took $2.85 in the so-called legal tender money, or "greenbacks" to buy a single dollar in gold.

Again, after gold and silver had become either directly or indirectly the monetary backing of well-nigh all of the paper money in circulation, and due it may be, to that "prophetic discernment" mentioned by Mr. Justice Hughes, (now Chief Justice) in the Shubert Case, infra, it became and has continued to be the custom to write into bonds a gold clause of the sort here vexing the Court. How much of this custom is due to mere conservatism of the lawyers who prepare these

obligations and who are prone to walk in the tracks of those who passed that way before them, it is fruitless to inquire.

As forecast, there was, when the custom latterly began, no particular advantage derivable from the insertion of such a proviso. Ordinarily, gold bore no premium; for so-
250 called gold notes passed and repassed on a parity with other paper money including the outstanding residue of greenbacks, although these gold notes, till recently (See, Act of March 9, 1933; Gold Reserve Act, January 30, 1934) could be redeemed on demand for coined gold, dollar for dollar. But this situation did not at all dam the ever-increasing flood of obligations, made payable on their faces in gold. This perhaps in many cases, at least, because the term "payable in gold coin of the United States of the present standard of weight and fineness", is a sonorous and mouth-filling phrase and indubitably it adds a dignity and a glamour of richness to all bonds; particularly to those which the maker had not and never had, the remotest intention of ever paying in anything. There is another and political theory; but which being political, has no place in a judicial opinion. But whether the origin of the custom was fortuitous merely, or considered and sinister, is after all immaterial.

It is of course conceded, that the serious question here can not thus be lightly dismissed, however lightly history may indicate it probably came into the case. For it involves, even though it may have arisen as a mere gesture, a most vital and serious question of constitutional law.

If the above-quoted language of the Congress be valid, then on its face it clearly relieves the Debtor from compliance with the provisions of the gold clause of the bonds, and the question is solved; on the other hand if the Congress had no power under the Constitution to pass Public Resolution 10, the Debtor is not relieved from compliance, and the question is largely solved.

251 Every man of passing intelligence, at all in touch with business, knows that the sum total of bonds and notes in this nation alone, which are "payable in gold coin of the United States of the present standard of weight and fineness", exceeds by many billions the sum of this whole world's existing mined gold. These huge sums are variously estimated at from $90,000,000,000 to $125,000,000,000, of outstanding gold obligations, and $11,000,000,000, of available mined gold; but available only in the sense that it exists in the form of coin or bullion. These facts courts, presumably no less intelligent than mankind in common, may judicially notice.

They cannot, of course, notice the exact sum of these extant gold obligations, nor is it important here. All that is relevant are the ultimate facts. When such an ultimate fact, impossible of proof, but known by all men, becomes relevant, especially arguendo as here, a court may take judicial notice of it; because in such case, every man knows it, but no man can prove it accurately; since accurate proof is humanly impossible.

It is, of course, impossible in fact, and it has now become impossible in law to pay this huge sum of what I may call gold debts, out of the world's comparatively meager supply of gold. Learned counsel for the interveners appreciate this impossibility; so, they urge upon the Court, the alternative, not expressly stipulated in the bond, that payment must be made in current paper money, which has the present gold value of the sum agreed to be paid. In short, and in effect, that the Debtor shall be required to pay for each dollar, forty-one cents more in paper money than it agreed to pay in gold.

While the disastrous economic effect of the enforce-
252 ment of a contract standing alone, rarely, if ever, affords a sufficient legal reason against enforcement, it may yet be considered an urgent reason why enforcement should not be decreed, if it is legally possible to avoid it. Germane, at least, if not analogous, is the settled rule in cases for specific performance. So, briefly, let the possible and probable economical effects of the adoption of interveners' contention be considered. It will well-nigh double the sum total of the debts outstanding and now saddled upon transportation and industry, upon States and municipal corporations and even upon many individuals. For hardly can it be doubted, that these, lately staggering toward bankruptcy, under the bare letter of their debts, cannot carry this doubled load and survive. It is scarcely possible, that at any time, since the so-called depression of 1929, the total fair value of all of the actual wealth in this nation has exceeded the sum of $260,000,000,000. If to the sum of all debts, in whatever medium of exchange payable, there shall be added some $80,000,000,000 more, perforce the enforcement of the alleged alternative of the gold clause, then this country may well be bankrupt; in the sense, at least, that the total sum of its debts exceeds the total fair value of all of its assets. I refer, of course, to debts, both public and private. Concededly, the picture is overdrawn, because in practice, payment of these vast sums, agreed to be paid in gold, will not contemporaneously be demanded or exacted. But the argument yet discloses a theoretical and perhaps possible situation, which is almost appalling.

So, it is obvious, I think, that the upholding of these so-called gold clause contracts would vastly hurt, if not destroy business, and shake if not overturn the entire financial
253 structure of this country. It would, I repeat, bankrupt well-nigh every railroad, every municipality, every road district, or similar instrumentality of state government and well-nigh every State in the Union. And since in the financial crash of these debtor classes, the creditor classes, now urging the letter of their bonds, might well themselves go down in the common ruin; this situation as already suggested, should be avoided, if it is legally possible to do so, within constitutional limits. Specifically, what will happen in the cast at bar? Can it be doubted, that if the Debtor here shall be compelled to pay $743,000,000, upon its mortgage indebtedness of $438,000,000 it will be utterly bankrupted and financially destroyed; that its general creditors and stockholders will get nothing, and even its bondholders will be paid only a part of their inflated debt?

I think it is fairly clear, that validity may be decreed, without at all impinging upon the Constitution, and without stating a single novel proposition, but merely by following old rules, many times announced either concretely, or in principle, by the Supreme Court of the United States. And in doing so, I shall not find it necessary at all to rely upon that well-settled canon of construction, which admonishes that a statute may not be held constitutionally invalid till the court is convinced of invalidity beyond a doubt.

The legal propositions which seem to me to be decisive of the question mooted, may be stated in questions. These questions are: (1) In whom, or in what entity in this nation, is the power lodged to say what shall be money, or the medium of exchange, for the payment of public and private
254 debts? (2) If the answer be, the Congress, then, has any citizen the constitutional right to so contract as to obstruct, or nullify, the above power of the Congress? (3) Is not every citizen to be deemed to hold in contemplation, when he makes a contract for the payment of money, the power of the Congress to alter and change the medium of exchange, or money of the country, if such power be in the Congress? (4) Can a law or resolution of the Congress be declared invalid, when it does nothing, except to carry out a constitutional power of the Congress? (5) Have subsequent valid changes in the laws pertaining to gold coin rendered strict performance impossible in law? This fourth question is, obviously, a mere corollary.

The answer to the first premise in the chain of argument and proof, that these gold clause contracts are not enforceable to the ultimate letter of their language and alleged implications, is that the power to say what is money, or the medium of exchange under the Constitution, is vested in the Congress. Not only does the Constitution itself in full effect, say so; but had it not said so, the power would yet rest in the Congress, perforce a universal right inherent in all sovereign nations. Lately, in an oral opinion in the case of Kercheval vs. Ross, I had occasion to say this:

"Dissociated from international exigencies, or, more accurately, from the necessities of commerce between nations, and inhibitions, if any, found in the organic law, every sovereignty has the inherent power to decree anything to be money, or a medium of exchange which it may desire; as witness, the iron coins of Sparta, * * * and other historical instances of the use as money of practically worthless substances, which instances are too numerous to mention.

It will be observed that the Federal Constitution no-
255 where categorically limits money to gold and silver, or even to metallic substances. It does say that "the Congress shall have power * * * to coin money (and) regulate the value thereof". If it be argued, that the Congress by the use of the transitive verb "coin", in the language quoted, intended that the money of the United States be limited only to such metals as are capable of being coined or minted, this argument is met by the decision of the Supreme Court of the United States in Knox vs. Lee and Parker vs. Davis, 12 Wall. 457, the so-called Legal Tender Cases. But such an argument is also met by the very language which concludes the sentence quoted; for, obviously, if the Congress has power to regulate the value of the coined or minted money of the United States, it may, so far as the Constitution is concerned, fix its value, or its so-called precious metal content, so low that, when judged by the standards of other nations, its value will be less than that of the paper on which so-called fiat money is printed".

Again, in this case of Kercheval vs. Ross, discussing the physical absence of any constitutional prohibition against the passage by the Congress of an act which violates the obligation of a contract, I said this:

"There is no express constitutional inhibition anywhere to be found which forbids the Congress from passing an act which violates the obligation of a pre-existing contract. Not only will the Federal Constitution be read in vain to find such

a provision, but the Supreme Court of the United States has repeatedly so ruled. (Hepburn vs. Griswold, 8 Wall.,
256 l. c. 623; Mitchell vs. Clark, 110 U. S., l. c. 643; Legal Tender Cases, 12 Wall., 457; New York vs. United States, 257 U. S., l. c. 601). If occasionally the Supreme Court has seemed to find such inhibition, it has deduced it from the so-called spirit of the Constitution (See Hepburn Case, supra,) or it has allocated it (many times, no doubt, correctly) among the numerous offspring of that fertile and elastic provision touching "due process of law", found in the Fifth Amendment. It is not, I repeat, to be found in any of the language of either the Constitution, or of the several amendments thereto".

Again, in this same case of Kercheval vs. Ross, without at all intimating criticism of the Supreme Court, as is shown by the exception I made above, I said:

"I have never been able to see wherein the unhampered exercise by the Congress of the power to declare what shall be the medium of exchange at all impinges upon "due process of law", when the constituent elements of that term are considered. (Duncan vs. Missouri, 152 U. S., l. c. 382; State vs. Guerringer, 265 Mo., 409). For there is the very highest judicial authority for the statement that:

'Whatever power there is over the currency is vested in Congress. If the power to declare what is money is not in Congress, it is annihilated' (Legal Tender Cases, 12 Wall., l. c. 545.)"

Also, in the Kercheval Case, in order arguendo, to prove the thesis that the power to say what shall be money, is inherent in a sovereign, I took occasion to say, this:

257 "The express power granted to the Congress 'to coin money (and) regulate the value thereof', was necessary only in an historical sense, and for the sake of clarity; this, for the reason that each of the original thirteen sovereign States had, in virtue of their sovereignties, the inherent right to say what should be the medium of exchange, or money, within their several jurisdiction. But for this fact, and the further fact that a voluntary union of independent states to form a single sovereign entity was then unique and unsual in this world, it would not have been necessary to confer express power on the Congress to deal with money. But the States each had this power, and it was deemed wise to take it from them. Therefore, induced, evidently, by the settled theory that the Federal Constitution is a grant and not a limitation of power, it was deemed wise to express the power, and

this was done. But, I repeat, this was not necessary. The United States having, in effect, taken the power from the States would have inherited it and possessed it, by virtue of its own sovereignty, even if it had not been mentioned in the organic law. * * *

"So, I am of opinion that the United States has, through the Congress, the constitutional power to prescribe by statute what is legal tender for the payment of both public and private debts, either subsequent or antecedent in their accrual to the passage of the law. * * * Moreover, by the Act of June 28, 1834, it did in principle what is tantamount thereto, that is to say, by the Act last above-referred to, it decreased the gold content of the gold coins of the United States, which, of course, indirectly, if not directly, impaired the obligations of existing contracts."

258 "In the absence of any provision in the Federal Constitution forbidding the passage of a statute which violates the obligation of a contract, and in the light of the ruling of the Supreme Court in the Legal Tender Cases, supra, it seems impossible to escape the conclusion that the Congress possesses the power to say what shall be the medium of exchange, even though the exercise of the power may indirectly result in the impairment of the obligation of existing contracts."

But the truth of this basic premise, in no way rests on my humble views, or on the rather plain language of a construable organic law; it rests on the decisions of the highest court in the land. (See Legal Tender Cases, 12 Wall., l. c. 543. Veazie vs. Fenno, 8 Wall. 533.)

From the above statement of the location of this power, the Supreme Court has never receded. Indeed, the truth of it is rendered so plain and simple, both by history and by logic, that it is almost amazing that it ever became necessary for the Supreme Court to point out the lodgment of the power.

If the premise laid down in the first question be proven, and none I feel sure will be hardy enough to deny it, I come in the argument, to the second premise, embodied in the second question, supra, which is:

Can any citizen, (and I include, of course, corporations) be permitted to hamper, obstruct, forestall, or hamstring the Congress, in the exercise of its power to declare what shall be money? It seems to me, that the simple statement of the question furnishes its own answer. Again, in addition to the obvious answer dictated by the plainest and simplest logic

and the reason of the thing, there is ample authority
259 furnished by the numerous decisions of the Supreme
Court of the United States, in cases on all fours in
principle.

In my opinion, under many rulings of the Supreme Court of the United States there can be no doubt that contracts, good when made, may become bad and incapable of enforcement, by reason of the passage by the Congress, acting within its constitutional limits, of subsequent prohibitions against the enforcement of such contracts. As witness, numerous cases decided by the Supreme Court of the United States which actually, or in effect abrogated prior, but perfectly good contracts, when such contracts were subsequently banned or forbidden by the Interstate Commerce Act. Just a few of these may be cited. (See, Louisville-Nashville R. R. vs. Mottley, 219 U. S. 467; Addyston Pipe Co. vs. United States, 175 U. S. 211; Philadelphia &c R. R. vs. Shubert, 224 U. S. 603; New York vs. United States, 257 U. S. 591.)

In the Case of Shubert, supra, the Supreme Court said, at page 613 this:

"To subordinate the exercise of the Federal authority to the continuing operation of previous contracts, would be to place, to this extent, the regulation of interstate commerce in the hands of private individuals and to withdraw from the control of Congress so much of the field as they might choose by *prophetic discernment* to bring within the range of their agreements. The Constitution recognizes no such limitation. It is of the essence of the delegated power of regulation that, within its sphere, Congress should be able to establish uniform rules, immediately obligatory, which as to future action
should transcend all inconsistent provisions. Prior
260 arrangements were necessarily subject to this para-
mount authority." (Italics are mine.)

Before the above quoted pronouncement, the Supreme Court had said, upon a question, in principle wholly germane, this:

"Long before the above cases were decided it was said in Knox vs. Lee, 12 Wall. 457, 550, 551, that as in a state of civil society, property of a citizen or subject is ownership, subject to the lawful demands of the Sovereign, so contracts must be understood as made in reference to the possible exercise of the rightful authority of the Government, and no obligation of a contract can extend to the defeat of legitimate government authority".

"These principles control the decision of the present question. The agreement between the railroad company and the Mottleys must necessarily be regarded as having been made subject to the possibility that, at some future time, Congress might so exert its whole constitutional power in regulating interstate commerce as to render that agreement unenforceable or to impair its value. That the exercise of such power may be hampered or restricted to any extent by contracts previously made between individuals or corporations, is inconceivable. The framers of the Constitution never intended any such state of things to exist." (Louisville & Nashville R. R. Co. vs. Mottley, 219 U. S. 467.)

In principle, I am wholly unable to distinguish the question before the Supreme Court, when it spoke as above quoted, from that of the question now confronting me in the case at bar. If I may immodestly venture to be dogmatic, I assert the impossibility of distinguishing these questions. The
261 powers of the Congress within the field of permissible legislation cannot be obstructed or nullified, by what Mr. Justice Hughes (now Chief Justice) characterized in the Shubert Case, supra, as "prophetic discernment". Any other and different conclusion, would be well-nigh abhorrent to both logic and common sense. For, I repeat, one who makes a contract, in a matter within the field of permissive congressional legislation must be deemed to do so with the knowledge that a subsequent act of the Congress may render void his solemn agreement. This rule and principle, which is not capable of distinction here, runs through the very warp and woof of the Federal Constitution. It has been invoked, and it has served to revoke and abrogate an antecedent contract valid when made, between a lawyer and his client (Calhoun vs. Massie, 253 U. S. 170); between a railroad and the holder of a free pass, issued antecedently and upon a good consideration (Louisville & Nashville R. R. Co. vs. Mottley, supra); between an employee and a railway, when, sued under the Employers' Liability Act, the railway set up an antecedent contract barring the beneficiary in a relief fund from maintaining an action for damages for personal injuries (Philadelphia &c R. R. Co. vs. Shubert, supra); between the United States and a bridge company, which constructed a bridge in navigable waters under State legislative sanction, valid when made (Union Bridge Co. vs. United States, 209 U. S. 364; Monongahela Bridge Co. vs. United States, 216 U. S. 177). It is not alone, I repeat, in the fields of interstate commerce, navigable waters, and lawyers' contracts for a fee for the recovery of money and pensions from the government, that

the right of the individual to forestall and obstruct the
262 Congress by an antecedent contract, is denied. The same principle has repeatedly been applied by the Supreme Court in matters of riparian rights. (See, Scranton vs. Wheeler, 179 U. S. 141; Greenleaf &c Co. vs. Garrison, 237 U. S. 251; Willink vs. United States, 240 U. S. 572; Cubbins vs. Mississippi, 241 U. S. 251; Jackson vs. United States, 230 U. S. 1;) and under the several Bankrupt Acts, (See, Hanover Bank vs. Moyses, 186 U. S. 187; Canada &c Ry. Co. vs. Gebhard, 107 U. S. 527; In Re Klein, Fed. Cases No. 7865; Sturges vs. Crowninshield, 4 Wheat. 367).

It is difficult if not impossible to conceive of an act of the Congress which more clearly destroys in many phases, the obligations of antecedent contracts, than does a Bankrupt Act. The creditor is presently forbidden to sue till the lapse of a stated period, (Sec. 29, Title 11, U. S. C., Sec. 205, Clause (1), Title 11, U. S. C.), and absolutely forbidden to sue after the discharge of the bankrupt. He must take but a part of his debt, and he must accept a composition forced on him by the votes and acts of others, when such composition and the taking of but a part are, in the very teeth of his contract. Yet, because the Constitution relegated this subject to future congressional action, Bankrupt Acts, however destructive to existing contractual rights, have been up to now uniformly upheld.

But a little diligence will unearth many other cases, which fully uphold the basic principle above announced. As forecast, the cases I cite above, uphold the principle, that when a person makes a contract involving a subject-matter within the ambit of the Congress' constitutional field of permissive
legislation, he does so at the peril that the Congress
263 may so change, or modify the law as to render his contract void, or unenforceable.

The above considerations and the cases cited, prove I think conclusively, the truth and correctness of the third question. Questions (2) and (3) are wholly germane, and the answer to one furnishes the answer to the other. It has long been necessary, in order at all to enforce the law, to indulge the conclusive presumption that every citizen knows the law. Actually, of course, the presumption is a fiction, but it is so necessary a fiction, that it is settled. So, if it be true, that the power to say what shall be money, be lodged in the Congress, then when a citizen makes a contract for the payment of his debt in gold, he must be deemed to have saddled himself with the knowledge, and to have had in contemplation the possibility, that his contract may become unenforceable,

through the exercise by the Congress of the power to declare something other than gold to be money. But I am not called on here to further belabor this well-settled doctrine, or to cite any of that multitude of cases, which, without a dissenting voice uphold it; because counsel for interveners concede in their briefs that "all the parties to these contracts are conclusively presumed to have known the law."

Coming to the proposition, or premise (4), which, as said is a mere corollary: Can a law, or resolution of the Congress be deemed, or held to be invalid, when it does nothing, except to carry out a power conferred on it, both by the Constitution and by virtue of the inherent sovereign right of the entity, for which the Congress is empowered to legislate. Again the question answers itself, even if the Supreme Court
264 had not, already repeatedly answered it. That answer is so plain and obvious as not to call for either exposition or the citation of authority.

In addition to the language already quoted from Public Resolution 10, the Congress saw fit to declare, in a preamble to this resolution, a policy of the Congress and to characterize gold clause contracts as being designed and calculated to "obstruct the power of the Congress to regulate the value of the money of the United States and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the market and in the payment of debts".

No attack is made here by counsel for intervenors, for that the Congress has no power to declare a continuing and ever-binding policy; nor is that question at all relevant or involved here. It is enough that it has been declared to meet what the Congress deemed a present and pressing emergency. But learned counsel for intervenors, in both their oral and printed arguments, do insist, most ably and strenuously, that no public policy is at all involved in a matter of private contract between a corporation and individual bondholders as here.

I submit with deference, that they have in this assumption fallen into grave error, in my opinion. Their conclusions upon the point are tantamount to the assertion, that any two members of our national compact bottomed as it is, on representative government may flout and disobey both the organic law and the mandate of their government, and arrogate to themselves a power which, as I labor to show, has been solemnly committed to the Congress alone. If this
265 may be done by two contracting parties in any given contract, I see no reason why it may not be done in

every contract; with at least, the theoretical result, to turn business and commerce back to ancient barter, or swapping of commodities. Commerce between the States, over which the Congress certainly has power, would be hampered or destroyed, and the only debts left payable in money would be debts due to and from the government itself. Surely, the power in the Congress to say what shall be money is not to be restricted, to a medium of exchange, which is to be binding only when the government pays or is paid. No such narrow meaning is to be found in the language of the Supreme Court when it declared, that "if the power to declare what is money, is not in the Congress, the power is annihilated."

Concededly, neither national policy, nor the Congress, is at all concerned ordinarily, in the terms of any moral private contract, so long as that contract does not infringe upon, nullify or circumvent a law of the Congress which it had the Constitutional power to pass. It is a settled rule of law that a thing which may not be done directly, may not lawfully be done indirectly. Obviously, no two persons can by a private contract directly repeal a law passed by the Congress, and so by the same token they can not do so by indirection.

But when all is said, the language of the preamble above quoted has little to do with this case. For the Congress used it as mere argument for the action it purposed taking, so I, in effect, have used it, in an effort lawfully to uphold, what the Congress did. But if, the point were vital, it would I think lose all force, in view of the power of the Con-
266 gress to forbid by suitable statutes the use as money of anything not put out under its own authority. (See, Veazie Bank vs. Fenno, 8 Wall. 549; National Bank vs. United States, 101 U. S. 1; Briscoe vs. Kentucky Bank, 11 Peters 257; Sturges vs. Crowninshield, 4 Wheat. 193; Ling Su Fan vs. United States, 218 U. S. 302.)

The policy which troubles here is that deducible from and expressed in the Resolution itself. This policy as forecast, is attacked by interveners by the bold contention that no private contract, whatever its terms and implications, and whatever its effects upon business, commerce and the nation may be, is any concern of the Congress. Cases no doubt may be found, which sustain this general contention in principle, but not in the broadness for which interveners here contend. Existing complexities of life, business, science and commerce have compelled a broader, saner and more correct view.

Apposite to this view and illustrative of the concept, the Chief Justice of the United States, speaking for a majority of the Supreme Court, in the late case of Home &c Assn., vs. Blaisdell, 290 U. S., 398, said this:

"Where in earlier days it was thought that only the concerns of individuals or of classes were involved and that those of the State itself were touched only remotely, it has later been found that the fundamental interests of the State are directly affected, and that the question is no longer merely that of one party to a contract as against another, but of the use of reasonable means to safeguard the economic structure upon which the good of all depends".

267 Again, and more recently, both the ordinary rule, and in fair effect, the exceptions to it and the modifications of it, are tersely stated by Mr. Justice Roberts in the case of Nebbia vs. New York, 291 U. S., ... thus:

"Under our form of government the use of property and the making of contracts are normally matters of private and not of public concern. The general rule is that both shall be free of governmental interference. But neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it in the common interest".

There is no subject on which the Congress is permitted to act which is more vital to labor, industry and commerce than is the question of what shall be money. While of course in the business of the world, actual money is used in probably only one-fiftieth of the world's business; checks upon bank-credits accounting for the remainder. This proportion is further vastly increased by the fact that banking experience discloses that about one-tenth of the total amount of deposits furnishes a sufficient safeguard. Concededly, the money of the nation, is in the final analysis behind these checks and bank-credits. So, if the money and credits of a country are permitted to pass into hands which close upon them, the effect upon labor, industry and commerce are destructively disastrous, and therefore, the matter of what shall be money is a matter in which the nation, and the
268 Congress which legislates for it, is most vitally concerned.

But as mentioned already, another contention is put forward by those who urge the validity of the gold-clause. In

that contention, they say, that even if the debt cannot be paid in gold, they are yet entitled to payment in such sum in currency as shall equal the present gold value of the number of dollars involved; in short, in gold, or its equivalent. I think it ought to be sufficient to say of this contention, that it is not "so nominated in the bond". In other words, the contract, does not say, that if gold is no longer money when pay-day comes, then payment shall be made in such money as is current; but on the basis of the amount of current money which a gold dollar will buy. I think the very terms of the contract preclude such a judgment.

The gold clause here vexing, is not a promise to pay these bonds in gold as money. It is a promise to pay in gold, not as money, but as a mere commodity; the bulk whereof, or the quantity of gold to be paid, to be equal to the gold content of one thousand dollars of gold coin of the United States of the standard of weight and fineness as of May 1, 1903. (See, Gregory vs. Morris, 96 U. S. l. c. 624; Bronson vs. Rodes, 7 Wall., 229, Butler vs. Horwitz, 7 Wall., 260.) In short, it is a mere agreement of barter, or swapping of commodities. If, in 1903, the contract had been that thirty years later, the maker would pay to the holder of each bond 100 piculs of Chinese opium, how would the case stand? Since 1903, the Congress, having the power to do so, has forbidden the importation of opium, (except under conditions designed to limit its use to medicinal purposes) and made the possession of it, in ordinary hands, a criminal offense. (Act, May 26, 1922, 42 Stats. 596). Thus, since the contract to pay in piculs of opium has since the contract was made, become impossible of performance by operation of law, what would be the situation? In law, I assume the contract would be void; in equity, the rights of the maker as well as those of the payee would be considered, and not those, as here insisted, of the payee alone. These equities, involving the alternative of utter destruction of the Debtor herein and total losses to its unsecured creditors and stockholders, I have already pointed out. In such situation a court of equity might well say to the payee, that having seen fit to contract for payment not in money, but in a presently unobtainable commodity, the money of payment must be such money as the law provides in ordinary cases, and to be measured in quantity by tale and not by the market price of the opium in 1934. The contention I repeat, involves writing into the contract language neither expressed nor implied by its actual terms. It is a trite truism to say, that

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rarely if ever, is a contract for the payment of a fixed sum of money carried out by the payment in money having the identical so-called purchasing power of the dollar agreed on, as and when agreed on. Between the date of the contract and the day of payment, the dollar will usually, if not always rise or fall when measured in terms of purchasing power. When regard is had to the precise nature of money, this contention, absent a contractual basis, has but little more to sustain it, than would the contention that payment in terms of dollars should be bottomed on the price of wheat. That is to say, if a dollar will, when the contract is made, buy two bushels of wheat, but when payment falls due the
270 same dollar will buy only one bushel of wheat, then instead of the dollar agreed to be paid, two dollars shall be exacted. And this too when the contract, as here is silent on the point. Money is merely a medium of convenience through which wealth, and labor are measured and moved in business and commerce, and between man and man.

But the contention, that, absent as here, the legal and practical possibility of payment in gold coin, their debt must be paid in the equivalent of gold, is that on which interveners mainly and most confidently rely. Concededly, their reliance is bottomed on persuasive and most exalted authority, so far as concerns the bare rule of stare decisis. This cannot be said of any other of their contentions in this case. Upon the point that they are entitled to be paid in current paper money, which according to its present value is the equivalent of the gold dollars of their contract, they not only cite a recent decision of the English House of Lords, and two decisions of the Permanent Court of International Justice, but a line of cases decided by the Supreme Court of the United States; among which as typical, are Gregory vs. Morris, 96 U. S. 619; Trebilcock vs. Wilson, 12 Wall. 687, and Bronson vs. Rodes, 7 Wall., 229.

The decisions first above-mentioned are merely persuasive, as coming from two great and learned tribunals. But as an inferior Court, I am in duty bound to follow the rulings of the Supreme Court; unless it is legally possible to distinguish the case at bar from the facts, the law and the situation existing, when the Gregory Case, the Trebilcock Case and the Bronson Case were up for judgment.

Hampered by this bounden duty, there is yet small
271 consolation in the fact, that before Bronson vs. Rodes, supra, and even after it, and until coerced by

the decision of the Supreme Court in Trebilcock vs. Wilson, supra, and by the Federal supremacy in the matter, therein declared, a majority of the highest courts in the several States of the Union disagreed with the doctrine of Bronson vs. Rodes. (See, Note, 84 A. L. R. 1503, et seq.)

Moreover, the learned writer of the above note, upon the point whether the question here vexing has been finally and authoritatively settled, says this:

"Although the validity and enforcement of provisions in contracts for payment in gold or gold coin have been sustained by many cases in this country, including a number of decisions by the Federal Supreme Court, the question can not now apparently be regarded as authoritatively settled because of changes in legislation and in conditions. Both the interpretation and the enforceability of the contract may conceivably be affected by these charges".

It may well be and arguendo conceded, that when resort is had for guidance to abstract justice and cold logic, the conclusions reached in each of the cases relied on by interveners are impeccable. But they were the result of the application of what I may call pure natural justice as contradistinguished from that same justice affected and modified by policy, statute and constitution. Natural justice is that tenet of philosophy which weighs the rights of mankind through the exercise of the most refined logic and fairness. It is germane, if not identical, with that ideal justice discussed and defined by Plato and Aristotle. But its field of operation must be unhampered by factual impossibility of performance or by restricting statutes, organic laws,
272 or policies of state. So, if such justice shall infringe upon national policy, or the Constitution, or be opposed by a valid statute, it cannot be administered or applied.

This at first glance may seem harsh, but it must be borne in mind, that in a republic, laws are made and policies are established by and for the greatest number for the greatest good; by and for the majority and not for the few. The latter may even be harmed in person or property by the enforcement of a statute, which while harming the few yet helps the great majority. Ours is a government by law and not of men. Having adopted a Constitution, which defined the limits of legislative permission, we then delegated to the Congress, elected by the greater number of the people, the duty to represent and speak for all of the people in fixing policies and making laws. Every law deprives a few men of the alleged right to do what they wish to do; but that does

not make the law bad; since it merely forbids the few from doing acts which harm the many. So, in fact, I think the harshness of the rule is upon the debtor and not upon the creditor.

Can it be doubted that the Congress had the right to say to those who had made contracts, the effect of which was to forestall and circumvent the Congress itself, that having usurped a power belonging to the Congress, they must give it back, because the exercise of it by a few wilful men would vastly harm this country? Again, can there be any doubt that it would do so? It cannot, of course, be doubted that if payment be decreed to be made in the paper money equivalent of gold, the power of the Congress in the premises will be just as effectually thwarted and nullified, as if payment in gold were decreed.

273 In each of the cases, and classes of cases above mentioned and relied on by interveners, gold was readily obtainable, (See, Bronson vs. Rodes, supra, l. c. 251) nor was the possession of it, at the time and place fixed for payment forbidden by law. Payment in gold in neither case was forbidden by either policy or statute. Here at bar, payment in gold, and even the possession of enough gold with which to make payment are forbidden to both payee and maker, and gold is wholly unobtainable. (See, Gold Reserve Act, January 30, 1934, 48 Stat. 340.) It was not so in the Gregory, Bronson and Trebilcock Cases. Moreover those cases, in effect, ruled that since the maker of the obligation involved, had agreed to pay in gold, or specie, and since he could lawfully obtain the agreed commodity of payment, he must do so; but if he saw fit not to pay in the commodity agreed on, he could offer and the payee must accept the equivalent in current paper money.

Reverting to, and elaborating the notion, that factual and legal impossibility of performance excuses the breach of a contract, I quote what was said on the point by Judge Van Devanter (now Mr. Justice Van Devanter), in the Case of United States vs. Dietrich, 126 Fed., l. c. 674, thus:

"It is well established by the English courts and by the courts of this country, Federal and State, that where performance of a contract or agreement, lawful in its inception, becomes unlawful by reason of any subsequent event, the contract or agreement is thereby dissolved or terminated, in so far as it remains executory, and both parties are excused from its further performance."

274 Nor is the legal situation at all affected, for that the bonds in question here fell due May 1, 1933. This for the reasons, that the Act of March 9, 1933, was then in force, and the properties of the Debtor were then in custodia legis.

I think the above considerations serve to distingush, the cases relied on by interveners, from the facts and law up for decision in the case at bar.

Finally interveners contend that, conceding the power of the Congress to pass a valid law, which indirectly renders void an antecedent contract, yet it may not pass a law which directly does the like.

Obviously, this contention is based on mere modality, and not on final result of the law. Likewise the contention carries the tacit admission, and briefs of counsel the express assertion that the Congress may do indirectly that which it has no power to do directly. No cases are cited by counsel for the above doctrine, and I know of none which uphold it. I had deemed the law to be that a legislative body, no more than an individual, could do indirectly that which it had no lawful power to do directly. Quite often it has been ruled by the Supreme Court that a state legislature, could not in a law, by a mere subterfuge of intentional, or even of unintentional, confusion, bring about indirectly a legal result which it had no power to bring about directly. If in short, the law on its bare face purported to produce a result in a field wherein the result was permissible, yet if the actual result was to invade a field wherein the result was prohibited, the law could not stand. This indicates that courts are concerned only with ultimate results, and not merely with the technical mode of consummation. I think the contention is in
275 principle answered by the Nebbia Case and the Blaisdell Case, supra, as well as others I have cited herein.

Moreover, that identical thing which interveners seem to concede may be done lawfully, has already been done in this case by laws and acts in pais, in nowise here attacked. For on January 31, 1934, pursuant to power conferred by the Act of May 12, 1933, the President by proclamation, reduced the gold content of the gold dollar, by comparison (cf. Sec. 315, Title 31, U. S. C.) to a little more than fifty-nine cents. But for other legislation (which I have already discussed) which took gold coin out of circulation, and forbade possession of it, payment in these deflated gold dollars would have had the identical effect of indirectly violating the obligation of interveners' contract. It would, I think, be an anomalous situation, if the Congress has the power to do indirectly a thing

it possesses no power to do directly. As forecast, it is settled, I think, that a thing which can not be done directly can not be done indirectly. By parity of reasoning it seems clear that a thing which can be done indirectly, can also be done directly. Germane to the notion, what was said in the Shubert Case, supra, seems apposite, thus: "Prior arrangements were necessarily subject to this paramount authority."

Summing up the premises laid down in the beginning, it seems to me impossible to escape these legal conclusions: (a) That in the Congress alone is lodged the power to say what shall be used as money; (b) no person in this nation has the right to make a contract the effect of which is to nullify, obstruct or circumvent the power of the Congress to say what shall be the national money, or medium of exchange;
276 (c) every person who enters into a contract is, in law, conclusively deemed to hold in contemplation the power of the Congress to alter and change the nature and so-called value of the medium of exchange, or money of the nation; (d) no law passed by the Congress can be invalid when it does no more than to carry out a power vested by the Constitution in the Congress and, (e) subsequent valid laws have rendered strict performance of the terms of the gold clause legally impossible.

And so it follows, that Public Resolution 10 is in my opinion valid; that the gold clause is therefore unenforceable in the ultimate letter thereof as urged by interveners, and is enforceable in equity only, to the extent that interveners as trustees, are entitled to recover, or to be paid on each $1,000 par value bond in controversy, the sum of $1,000 in such money of the United States as is now current, or as shall be current when the final decree herein for payment is entered.

Let an order be presented for settlement and entry, accordingly.

FARIS, J.

Filed June 20, 1934. Jas. J. O'Connor, Clerk.

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279 Record Entry of Filing of Several Answers to Special Intervention of United States of America.

(June 21, 1934.)

Separate answers of Missouri Pacific Railroad Company; New Orleans, Texas & Mexico Railway Company; St. Louis, Brownsville and Mexico Railway Company; Beaumont, Sour

Lake and Western Railway Company; San Antonio, Uvalde & Gulf Railroad Company; Houston Northshore Railway Company; and International Great Northern Railroad Company and their trustees to special intervention of United States of America for income taxes, etc., filed.

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280 (Order Directing Trustees as to Keeping of Records and Accounts Showing Earnings, etc.)

This cause coming on further to be heard on this day upon the petition dated December 4, 1933, of Bankers Trust Company and William H. Bixby, as Trustees under the St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions, First Mortgage, and upon the answers thereto by L. W. Baldwin and Guy A. Thompson, Trustees of the Missouri Pacific Railroad Company; Guaranty Trust
281 Company and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of Missouri Pacific Railroad Company; United States of America; and Reconstruction Finance Corporation; and the Court having heard the arguments of counsel and being fully advised in the premises:

It Is Ordered, Adjudged and Decreed as follows:

1. That L. W. Baldwin and Guy A. Thompson, Trustees of the Debtor (hereinafter referred to as the "Debtor's Trustees"), are directed to keep records and accounts showing separately the tolls, earnings, incomes, rents, issues and profits which have come into their possession since January 1, 1934, or may hereafter come into the possession of said Trustees, and which have been or may hereafter be derived from any of the properties covered by the St. Louis, Iron Mountain and Southern Railway Company, River and Gulf Divisions, First Mortgage (hereinafter referred to as the "Mortgage").

2. That the Trustees of the Mortgage (hereinafter referred to as the "Mortgage Trustees"), shall not be required to make any further demand or application for the enforcement in this proceeding of any lien or right in respect of any of the tolls, earnings, incomes, rents, issues and profits of the property covered by the Mortgage, (including the tolls, earnings, incomes, rents, issues and profits of any mortgage bonds subject to the lien of the Mortgage) accruing since January 1, 1934, as the same may hereafter be determined herein by a formula for the allocation of earnings duly approved by the

Court upon due notice to the parties of record; and the
282 rights of the Mortgage Trustees shall be determined as if due demand and application had been made by the Mortgage Trustees, and this order had been entered on January 1, 1934.

3. That the Mortgage Trustees shall be entitled to apply at the conclusion of this proceeding, or at such earlier time or times as they may deem proper, upon due notice to all the parties of record, for the enforcement of their liens upon or rights in the tolls, earnings, incomes, rents, issues and profits of the property covered by the Mortgage (including the tolls, earnings, incomes, rents, issues and profits of any mortgage bonds subject to the lien of the Mortgage), and of their lien upon or rights in any of the proceeds thereof, and for an equitable adjustment as between those interested in this proceeding, with respect to any use which may have been made of any of the same; but nothing in this order shall be construed as determining the merits of any such application, or as requiring the Debtor's Trustees to pay over or earmark any of the same pending the further order of the Court, except such as may be received on account of the securities referred to in Paragraph VIII of the petition of the Mortgage Trustees.

4. That this order shall not be deemed to be a determination of the necessity for the making of any demand or application herein mentioned and, except as expressly provided herein, is without prejudice to any of the rights of the Mortgage Trustees, or of any other party hereto, in respect of any tolls, earnings, incomes, rents, issues and profits, or any of the proceeds thereof; and

5. That all other issues raised by said petition of the
283 Mortgage Trustees, and the answers thereto, are hereby reserved, except the issue as to the effect of the gold clause, which was set down for argument on May 25.

C. B. FARIS,
United States District Judge.

Approved:

EDW. J. WHITE,
For Trustees.

NAGEL, KIRBY, ORRICK & SHEPLEY,
For Guaranty Trust ~~Co.~~ and B. F. Edwards, Trustees under 1st and Rfdg. Mtge.

ALEXANDER & GREEN,
For Bankers Trust Company and William H. Bixby, Trustees, Petitioners.

Approved:

RECONSTRUCTION FINANCE CORPORATION,
By C. M. CLAY,
MAX O'RELL TRUITT,
Counsel.

Filed Jun. 21, 1934. Jas. J. O'Connor, Clerk.

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284 Record Entry of Filing of Decree.

(July 6, 1934.)

Decree on petitions of trustees of debtor and others to construe Gold Clause in bonds pleaded by Bankers Trust Company, special intervener, under St. Louis, Iron Mountain and Southern Railway Company River and Gulf Divisions First Mortgage, filed.

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285 Decree on Petitions of Trustees of Debtor and Others, to Construe the Gold Clause in Bonds Pleaded by Bankers Trust Company, Special Intervener, Under St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage.

The above cause having come on to be heard, on the twenty-fifth day of May, A. D. 1934, upon the petition of Bankers Trust Company of New York and W. K. Bixby, Trustees of the St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage, interveners, and upon the answer of the Trustees of the Debtor, Mis-
286 souri Pacific Railroad Company, and the answers of the Reconstruction Finance Corporation and United States of America, interveners, praying for affirmative relief therein, involving and concerning the validity of the so-called "gold clauses," hereinafter described, contained in the St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage, dated May 1, 1903, and the bonds issued thereunder, and praying for a decree that the amount due under the St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage, dated May 1, 1903, and the bonds issued thereunder, is the principal amount named in the bonds validly issued and outstanding thereunder, with interest thereon, all payable in

such money of the United States as is legal tender for the payment of debts, notwithstanding the so-called "gold clauses" contained in said mortgage and bonds,

and

upon the issues presented by the said petition and the said answers, praying for affirmative relief therein, involving and concerning the validity of the so-called "gold clauses" hereinafter described contained in said mortgage and said bonds,

and

counsel for Bankers Trust Company and W. K. Bixby, as Trustees of said St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage, dated May 1, 1903, having contended that Joint Resolution No. 10 of Congress, of June 5, 1933, is in contravention of the Constitution of the United States and beyond the
287 powers of Congress as applied to the so-called "gold clauses" of said mortgage and said bonds, and having contended that Congress has no power to violate or impair the obligation of said mortgage and bonds for payment in gold coin of the United States of the standard of weight and fineness existing on May 1, 1903, or its equivalent, and the Court having considered the evidence and the arguments and briefs of counsel, and being fully advised in the premises, doth make the following Findings:

(1). That it is provided in the said Mortgage and in each of the said Mortgage Bonds by the so-called "gold clauses," hereinbefore mentioned, that the principal of and the interest on the indebtedness represented thereby is payable in gold coin of the United States of the standard of weight and fineness existing on May 1, 1903.

(2). That the interveners, Bankers Trust Company and W. K. Bixby, as Trustees under the said mortgage, claim that there have been heretofore validly issued and are now outstanding under and secured by said mortgage bonds providing for the payment of $34,548,000, principal amount, in gold coin of the United States of the standard of weight and fineness existing on May 1, 1903, and interest thereon payable in like gold coin.

(3). That the said gold clauses contained in the said Mortgage and Bonds, as hereinbefore set out, are void and cannot legally be enforced by valid judgment at law, and if enforceable, in equity, then only to the extent that interveners, as

Trustees, are entitled to recover on each $1,000 (principal amount) bond in controversy the sum of $1,000 and the
288 interest due thereon, in such money of the United States as is legal tender for the payment of debts.

(4). That payment of the amount of the principal and interest due upon said bonds, in such money of the United States as is legal tender for the payment of debts, will discharge, dollar for dollar, the face amount of such indebtedness on account of the principal and interest due on said bonds.

(5). That Public Resolution No. 10, 73d Congress, approved June 5, 1933, is constitutional and valid, and by virtue thereof payment of the principal of and interest on said Mortgage Bonds in any gold coin of the United States, or in an amount of money equivalent to the value of gold coin, is against public policy.

(6). That payment in gold, or in gold coin, is and has been since May 1, 1933, the date of the maturity of said Mortgage Bonds, impossible in fact and in law.

(7). That payment in lawful money of the United States in an amount equivalent to the value of gold coin would seriously interfere with the reorganization of the Debtor Railroad.

(8). That the pendency, undisposed of, of the question thus presented interposes a serious obstacle to the continued orderly administration of the affairs of the Debtor Railroad and impedes, delays, hinders and obstructs the reorganization of said Railroad.

Wherefore, It Is by the Court, this 6th day of July, A. D. 1934,

Ordered, Adjudged and Decreed that the said Trustees
289 and the said bondholders are entitled to payment of $1,000 upon each said bond in the principal amount of $1,000, validly issued and outstanding, in such lawful money of the United States as is legal tender for the payment of debts, with interest thereon, also in such lawful money of the United States; and that such payment shall extinguish the total amount of both principal and interest due upon the said bonds.

Further Ordered, Adjudged and Decreed that any and all amounts payable to the said Mortgage Trustees shall be paid to said Trustees in any lawful money of the United States which is legal tender for debts; and that the money so paid

shall be accepted by said Trustees at the nominal value thereof and in discharge, dollar for dollar, of the face amount of the indebtedness, including interest, to which it may be applied.

And It Is Further Ordered, Adjudged and Decreed that the claims of the said Trustees and the said bondholders for payment in gold or its equivalent and for payment in excess of that herein decreed is denied and rejected.

C. B. FARIS,
United States District Judge.

Filed Jul. 6, 1934. Jas. J. O'Connor, Clerk.

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293 (Petition for Appeal to be Allowed by U. S. District Court.)

(Filed July 26, 1934.)

To the Honorable Charles B. Faris, Judge of the United States District Court for the Eastern Judicial District of Missouri, Eastern Division:

Your petitioners, Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, pray that an appeal be granted from the decree entered in the above-entitled cause on July 6, 1934, entitled "On Petitions of Trustees of Debtor and Others, to Construe the Gold Clause in Bonds Pleaded by Bankers Trust Company, Special Intervener, Under St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage", to the United States Circuit Court of Appeals for the Eighth Circuit for the reasons specified in the Assignment of Errors which is filed herewith.

And your petitioners pray further that a citation may be granted directed to the Debtor; to L. W. Baldwin and Guy A. Thompson, as Trustees of the Debtor; to Reconstruction Finance Corporation, intervener; to United States of America, intervener; and to Guaranty Trust Company of
294 New York and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company, interveners; commanding them to appear before the said United States Circuit Court of Appeals for the Eighth Circuit, at St. Louis, Missouri, and to do and receive that which may appertain to justice to be done in the premises; and that a transcript of the record and evidence in said proceedings, duly authenticated, may be trans-

mitted to the said United States Circuit Court of Appeals for the Eighth Circuit.

And your petitioners pray that the Court fix the amount of the bond which petitioners shall give on said appeal.

BANKERS TRUST COMPANY
and WILLIAM H. BIXBY,
As Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933,
By Alexander & Green,
Attorneys for Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, and

JAMES H. McINTOSH,
EDWARD W. BOURNE,
THOMAS W. WHITE,
Attys. for Bankers Trust Co. and W. K. Bixby, Trustees.

July 25, 1934.

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295 (Assignment of Errors on Appeal Allowed by U. S. District Court.)

(Filed July 26, 1934.)

Come now Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, having made their petition for appeal herein from the order entered herein on July 6, 1934, entitled "On Petitions of Trustees of Debtor and Others, to Construe the Gold Clause in Bonds Pleaded by Bankers Trust Company, Special Intervener, Under St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage", and file the following assignment of errors, upon which they will rely upon the prosecution of this appeal:

1. The Court erred in making its Finding No. (3).
2. The Court erred in making its Finding No. (4).
3. The Court erred in making its Finding No. (5).

4. The Court erred in making its Finding No. (6).

5. The Court erred in making its Finding No. (7).

6. The Court erred in making its Finding No. (8).

7. The Court erred in failing to hold that the so-called
296 "gold clauses" in the Mortgage and Bonds referred to in said decree were intended to and do entitle the obligees to gold coin of the United States of the standard of weight and fineness on May 1, 1903, or to the equivalent thereof if such equivalent could be determined.

8. The Court erred in failing to hold that the equivalent of $1,000 in gold coin of the United States of the standard of weight and fineness on May 1, 1903, could be determined, and was at the time of said decree and still is the number of dollars then and now current obtained by multiplying 1,000 by 25.8 and dividing the same by 15-5/21.

9. The Court erred in failing to hold that the lien of the Mortgage and the amount due on the Bonds issued thereunder could not be discharged except by the payment of the amount of such lien or otherwise pursuant to law.

10. The Court erred in holding that Congress had the power under the Constitution of the United States to enact so much of Public Resolution No. 10, approved June 5, 1933, as purports to provide that every obligation requiring payment in gold or in an amount in money of the United States measured by gold could be discharged upon payment, dollar for dollar, in any coin or currency which at the time of the payment is legal tender for public and private debts.

11. The Court erred in failing to hold that so much of Public Resolution No. 10, approved June 5, 1933, as purports to provide that every obligation requiring payment in gold or in an amount in money of the United States measured by gold could be discharged upon payment, dollar for
dollar, in any coin or currency which at the time of
297 payment is legal tender for public and private debts is in contravention of the Constitution of the United States and particularly the Fifth Amendment thereto.

12. The Court erred in holding that the Trustees and the Bondholders are entitled only to payment of $1,000 upon each Bond in the principal amount of $1,000, validly issued and outstanding, in such lawful money of the United States as is legal tender for the payment of debts, with interest thereon, also in such lawful money of the United States;

and that such payment would extinguish the total amount of both principal and interest due upon said Bonds.

13. The Court erred in holding that any and all amounts payable to the said Mortgage Trustees should be paid to said Trustees in any lawful money of the United States which is legal tender for debts, and that the money so paid should be accepted by said Trustees at the nominal value thereof and in discharge, dollar for dollar, of the face amount of the indebtedness, including interest, to which it may be applied.

14. The Court erred in holding that the claims of the said Trustees and the said Bondholders for payment in gold or its equivalent and for payment in excess of that provided for in said decree should be denied and rejected.

Wherefore, appellants pray that the said decree entered herein on July 6, 1934, be reversed, and that such other and further relief may be given these appellants as may
298 be just and proper.

BANKERS TRUST COMPANY and
WILLIAM H. BIXBY,
As Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933.
By Alexander & Green,
Attorneys for Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, and
JAMES H. McINTOSH,
EDWARD W. BOURNE,
THOMAS W. WHITE,
Attorneys for Bankers Trust Co. and Wm. K. Bixby, Trustees.

July 25, 1934.

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299 (Order of U. S. District Court Allowing Appeal, etc.)

(Received and Filed July 30, 1934.)

The petition of Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, for an appeal from the decree en-

tered herein on July 6, 1934, entitled "On Petitions of Trustees of Debtor and Others, to Construe the Gold Clause in Bonds Pleaded by Bankers Trust Company, Special Intervener, Under St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage", is hereby granted, and the appeal to the United States Circuit Court of Appeals for the Eighth Circuit is allowed upon the said Bankers Trust Company and William H. Bixby, as Trustees aforesaid, giving bond as required by law in the sum of $250.

Dated, July 28, 1934.

C. B. FARIS,
United States District Judge.

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300 (Bond on Appeal Allowed by U. S. District Court.)

(Filed July 30, 1934.)

Know All Men By These Presents, That We, Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage Bonds due May 1st, 1933, as Principals and the American Surety Company of New York, a corporation organized and existing under the laws of the State of New York, of No. 100 William Street, Borough of Manhattan, City of New York, as Surety, are held and firmly bound unto Missouri Pacific Railroad Company debtor, L. W. Baldwin and Guy A. Thompson, as Trustees of the Debtor, Reconstruction Finance Corporation, Intervener, United States of America, Intervener, Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company, Interveners, (Obligees) in the full and just sum of Two Hundred Fifty and 00/100 Dollars ($250.00) to be paid to the said Obligees by said Principals, their successors or assigns, to which payment well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents. Sealed with our seals and dated the 25th day of July, 1934.

Whereas, a Decree was entered in the above entitled cause on the 6th day of July, 1934, entitled "On Petition of Trustees of Debtor and Owners, to construe the Gold Clause in Bonds Pleaded by Bankers Trust Company, Special Intervener, under St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage", and

Whereas, the said Principals have prosecuted an appeal to the United States Circuit Court of Appeals for the Eighth Circuit, from the said decree entered herein.

Now, Therefore, The Condition Of This Obligation Is Such, That if the said Principals shall prosecute said appeal to effect and answer all costs if they fail to make their plea good, then this Obligation to be void, otherwise to remain in full force and effect.

BANKERS TRUST COMPANY,
By Brenton Welling,
Vice President (L. S.)

Attest:
W. C. Meyers,
Assistant Secretary.

WILLIAM H. BIXBY,
By W. B. Dean,
Agent as Trustees aforesaid (L. S.)

(Seal) AMERICAN SURETY COMPANY OF NEW YORK,
By: Leon Sekeson,
Resident Vice President.

Attest:
M. S. Godwin,
(Seal) Resident Assistant Secretary.

Approved:
Faris, J.

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301 (Order Approving Bond Filed in U. S. District Court.)

(Received and Filed July 30, 1934.)

Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, having presented their appeal bond on their appeal from the decree entered in this cause on the 6th day of July, 1934, it is hereby

Ordered that the said appeal bond be and the same hereby is approved.

July 28, 1934.

C. B. FARIS,
United States District Judge.

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302 (Order Extending Time to File Statement of Evidence and Transcript on Appeal Allowed by U. S. District Court.)

(Filed September 4, 1934.)

Upon application, and for good cause shown, it is ordered that the time for filing the Statement of Evidence and Praecipe in this Court be and the same is hereby extended to and including the first day of October, 1934.

It Is Further Ordered, that the time for filing the Transcript of Record in the United States Circuit Court of Appeals for the Eighth Circuit, be and the same is hereby extended to and including the first day of October, 1934.

C. B. FARIS,
United States District Judge.

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303 Notice of Lodgment of Statement of Evidence.

(Filed Sept. 6, 1934.)

You Are Hereby Notified that the undersigned appellants, Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage, Due May 1, 1933, have lodged their Statement of Evidence in the above matter in accordance with Equity Rule 75 (b), and that they will ask this Honorable Court to approve said Statement of Evidence at 10:00 o'clock A. M., on Monday, September 17, 1934, or as soon thereafter as they may be heard, in Court No. 1 of the United States District Court for the Eastern Division Eastern Judicial District of Missouri.

JAMES H. McINTOSH,
EDWARD W. BOURNE,
THOS. W. WHITE,
Solicitors for Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway River and Gulf Divisions First Mortgage, Due May 1, 1933.

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304 Received copy of the above notice this 5th day of September, 1934.

RECONSTRUCTION FINANCE CORPORATION, a corporation,
By Max O'Rell Truitt per E. J. B.
Attorneys for the Reconstruction Finance Corporation.

UNITED STATES OF AMERICA,
By Harry C. Blanton and
Angus D. McLean,
Attorneys for United States of America.

GUARANTY TRUST COMPANY OF NEW YORK and BENJAMIN F. EDWARDS, Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company,
By Nagel, Kirby, Orrick & Shepley,
Attorneys for Guaranty Trust Company of New York and Benjamin F. Edwards, Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company.

L. W. BALDWIN and GUY A. THOMPSON, Trustees in Reorganization of the Missouri Pacific Railroad Company,
By Edw. J. White,
Attorney for L. W. Baldwin and Guy A. Thompson, Trustees in Reorganization of the Missouri Pacific Railroad Company.

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305 (Praecipe for Transcript by Bankers Trust Company, et al.)

(Filed September 6, 1934.)

To the Clerk of the United States District Court for the Eastern Judicial District of Missouri, Eastern Division:

You Are Hereby Requested to make a transcript of the record and proceedings had in your Court in the above entitled cause to be filed in the United States Circuit Court of Appeals for the Eighth Circuit, pursuant to an appeal allowed to the undersigned in the District Court of the United States

on July 28, 1934, in the above cause, and to include in such transcript the following:

1. Debtor's Petition, filed March 31, 1933, Petition No. 1.

2. Order approving Debtor's Petition, dated March 31, 1933, Order No. 1.

3. Order concerning filing of claims of creditors, dated May 13, 1933, Order No. 19.

4. Petition of Trustees of First and Refunding Mortgage, filed June 7, 1933. Petition No. 44, (Description of property and all schedules to be omitted as in printed record).

5. Order on Petition of Trustees of First and Refunding Mortgage, dated June 7, 1933, Order No. 44a.

6. Further order on Petition of Trustees of First and Refunding Mortgage, dated June 22, 1933, Order No. 44b.

7. Order confirming appointment of Trustees, filed July 26, 1933, Order No. 57.

8. Petition of Bankers Trust Company and William H.
306 Bixby, as Trustees of the Iron Mountain Mortgage, filed December 27, 1933, Petition No. 173 (Exhibit to be omitted).

9. Order permitting Special Intervention of Bankers Trust Company, dated April 5, 1934, Order No. 173.

10. Answer of Trustees, filed April 10, 1934, Answer No. 173.

11. Petition of Reconstruction Finance Corporation and United States of America for leave to intervene, filed January 25, 1934, Petition No. 175.

12. Order permitting intervention of Reconstruction Finance Corporation, filed April 5, 1934, Order No. 175.

13. Petition of Intervention of United States of America, filed April 11, 1934, Petition No. 176.

14. Order permitting intervention of United States of America, filed April 5, 1934, Order No. 176.

15. Answer of Reconstruction Finance Corporation, Intervener, filed April 9, 1934, Answer No. 173a.

16. Answer of United States of America, Intervener, filed April 28, 1934, Answer No. 173b.

17. Answer of Trustees of First and Refunding Mortgage, filed May 16, 1934, Answer No. 173c

18. Clerk's minutes of the proceedings in this cause on the following dates: December 27, 1933; January 29, 1934; March 24, 1934; April 5, 1934; April 10, 1934; April 28, 1934; May 1, 1934; May 4, 1934; May 18, 1934; May 23, 1934; May 25, 1934; June 20, 1934; June 21, 1934; and July 6, 1934.

19. Opinion of the Court filed June 20, 1934, Opinion 173a.

20. Further order on intervention petition (Sequestration Order) filed June 21, 1934, Order No. 173.

21. Decree on Petitions of Trustees of Debtor and others, filed July 6, 1934, Order No. 173a.

22. Statement of Evidence and order approving same.

23. Copy of St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage, Due May 1, 1933, offered in evidence.

24. Copy of specimen St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Bond due May 1, 1933, offered in evidence.

25. Petition for appeal.

26. Assignment of Errors.

27. Order allowing appeal, and date thereof.

307 28. Bond, showing approval by Court, and date filed.

29. Order approving bond, and date filed.

30. Order extending time for filing Praecipe, etc., and date thereof.

31. Notice of Lodgment of Statement of Evidence and date filed.

32. Citation.

33. Praecipe, and service thereof on all parties.

BANKERS TRUST COMPANY and
WILLIAM H. BIXBY, As Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933.
By James H. McIntosh,
Edward W. Bourne,
Thos. W. White,
Their Counsel.

St. Louis, Mo.

September ....., 1934.

We hereby agree that the above and foregoing Praecipe is correct; that the records, documents, papers and proceedings therein set forth are sufficient for a complete record in the cause on writ of error and on appeal, and we hereby adopt the foregoing as the list designated by each of the parties to this cause to complete said transcript, and we hereby waive the issuance and service of notice upon any party hereto, and agree that said Praecipe shall be obeyed by and acted upon by the Clerk as fully and to all intents and purposes in the same manner as if said praecipe had been regularly filed, and a true copy thereof served on each party thereto, and we hereby acknowledge due service of citation in this cause.

RECONSTRUCTION FINANCE CORPORATION, a corporation.

By .....

Attorneys for Reconstruction Finance Corporation.

Finance Corporation.

UNITED STATES OF AMERICA,

By .....

Attorneys for United States of America.

GUARANTY TRUST COMPANY OF
308 NEW YORK and BENJAMIN F. EDWARDS, Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company,

By .....

Attorneys for Guaranty Trust Company of New York and Benjamin F. Edwards, Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company.

L. W. BALDWIN and GUY A. THOMPSON, Trustees in Reorganization of the Missouri Pacific Railroad Company.

By .....

Attorney for L. W. Baldwin and Guy A. Thompson, Trustees in Reorganization of the Missouri Pacific Railroad Company.

Copy of the within Praecipe for Record received this fifth day of September, 1934.

HARRY C. BLANTON,
U. S. Atty.,
Of Counsel for United States of America,

EDW. J. WHITE.

Copy of the within Praecipe for record received this fifth day of September, 1934.

MAX O'RELL TRUITT,
NAGEL, KIRBY, ORRICK & SHEPLEY,
Attys. for Guaranty Trust Co. & Benj. F. Edwards, Trustees under 1st & Refunding Mtge. of Missouri Pacific R. R. Co.

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309 (Praecipe for Transcript by Reconstruction Finance Corporation.)

(Filed September 15, 1934.)

To the Clerk of the United States District Court for the Eastern Judicial District of Missouri, Eastern Division:

You Are Hereby Requested, in making up the transcript of record for the United States Circuit Court of Appeals for the Eighth Circuit, in the above entitled cause, to incorporate the following additional portions of the record not requested by the appellants:

(1) Petitions and Orders concerning payment of interest on Iron Mountain Bonds, dated May 4, 1933, September 28, 1933, and April 16, 1934, Petitions and Orders Nos. 15, 86, and 178 (with supplement).

(2) Petition of Reconstruction Finance Corporation, Answer of the Debtor, and Order No. 40, all concerning the temporary appointment of Trustees; and Order No. 45, supplementing Order No. 40.

(3) Answer of Trustees of Debtor to intervening petition of the United States of America, Answer No. 176.

(4) Oral memorandum of the Court on Interveners' motion to amend intervening petition, May 22, 1934.

(5) Clerk's minutes of April 9, 1934, relating to answer of Reconstruction Finance Corporation, and minutes of May 22 and May 24, 1934, relating to oral memorandum of
310 Court on Interveners' Motion to amend intervening petition.

(6) Oral stipulation between counsel for appellant and counsel for trustees of debtor, entered into in the argument of the cause on May 23, 1934, as follows:

"The defendants say that they are willing to admit that a default occurred in the payment of the debt evidenced by the bonds in question, when they became due on the First of May, 1933, and that the face amount of the bonds outstanding in the hands of the public, of this issue, aggregate $34,548,000."

RECONSTRUCTION FINANCE CORPORATION,
STANLEY REED,
C. M. CLAY, Washington, D. C.,
By Max O'Rell Truitt, St. Louis,
Attorney for Reconstruction Finance Corporation.

PAUL FREUND, of Counsel.
GREEN, HENRY & REMMERS,
Of Counsel, St. Louis, Mo.

St. Louis, Missouri, September 14, 1934.

Receipt of service and notice of appellee's additional praecipe for record, hereby acknowledged.

UNITED STATES OF AMERICA,
ANGUS D. MacLEAN,
Asst. Solicitor General, by H. C. B.
By Harry C. Blanton, U. S. Atty.,
Atorneys for United States of America.

GUARANTY TRUST COMPANY OF NEW YORK and
BENJAMIN F. EDWARDS,
Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company,
By Nagel, Kirby, Orrick & Shepley,
Attorneys for Guaranty Trust Company of New York and Benjamin F. Edwards, Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company.

L. W. BALDWIN and
GUY A. THOMPSON,
Trustees in Reorganization of the Missouri Pacific Railroad Company,
By Edw. J. White,
Attorney for L. W. Baldwin and Guy A. Thompson, Trustees in Reorganization of the Missouri Pacific Railroad Company.

311 Solicitors for Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage due May 1, 1933.

By Alexander & Green,

By Fordyce, White, Mayne & Williams,
Solicitors for Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage due May 1, 1933.

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312 Statement of Evidence Under Equity Rule 75.

(Filed Sept. 17, 1934.)

Be It Remembered that in the above-entitled cause there came on for hearing before the above-entitled Court sitting in Bankruptcy on the 25th day of May, 1934, the applications of the Trustees of the Debtor, and Reconstruction Finance Corporation and United States of America, Special Interveners, for a decree herein under Equity Rule 29 for the affirmative relief prayed for in their respective answers to the intervening petition of Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933.

Appearances:

James H. McIntosh, Esq., Edward W. Bourne, Esq., and Thomas W. White, Esq., for Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage.

Edward J. White, Esq., for the Trustee of the Missouri Pacific Railroad Company.

Honorable Stanley Reed, C. M. Clay, Esq., Max O'Rell Truitt, Esq., and Paul A. Freund, Esq., for Reconstruction Finance Corporation.

Honorable Angus D. McLean, for United States of America, Honorable Harry C. Blanton, United States Attorney for United States of America.

It was stated in open Court that the parties had agreed to an order relating to the sequestration of income. This order was duly submitted to the Court and thereafter duly signed, and is Order No. 173 in this cause.

313 A copy of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage was offered in evidence and received without objection.

A specimen St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Bond was offered in evidence and received without objection.

The said copy of the Mortgage and the said copy of the bond are to be separately printed in full as part of the record on appeal.

It was stipulated that when the principal of the Bonds and Mortgage became due on the 1st day of May, 1933, the same were not paid and a default occurred.

That thereafter, to-wit, on the 20th day of June, 1934, the Court rendered an oral opinion finding the issues joined against the Interveners Bankers Trust Company and William H. Bixby, as Trustees under the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage, and on July 6th, 1934, entered its decree in accordance therewith.

The above and foregoing is all the material evidence introduced at the trial of said cause.

(Prayer of Bankers Trust Company, et al., for Approval of Statement of Evidence.)

Wherefore, Bankers Trust Company and William H. Bixby as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, pray that the above Statement of Evidence be

settled, approved and allowed by the above-entitled Court as a true, full, correct and complete statement of all the evi-
314 dence taken and given on the trial of said cause for use on the appeal taken to the United States Circuit Court of Appeals for the Eighth Circuit.

JAMES H. McINTOSH,
EDWARD H. BOURNE,
THOS. W. WHITE,
Solicitors for Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage due May 1, 1933.

(Approval of Statement of Evidence by District Judge.)

Statement of Evidence approved this 17th of September, 1934.

C. B. FARIS,
U. S. District Judge.

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315 (Stipulation Relating to Default in Payment of Debt, etc.)

(Filed September 21, 1934.)

It is hereby stipulated by and between the parties hereto that in the hearing of the above cause on May 25, 1934, the following oral stipulation was entered into between Counsel for parties to the cause, as follows:

"The defendants say that they are willing to admit that a default occurred in the payment of the debt evidenced by the bonds in question, when they became due on the first of May, 1933, and that the face amount of the bonds outstanding in the hands of the public of this issue, aggregate $34,548,000."

RECONSTRUCTION FINANCE CORPORATION,
By Max O'Rell Truitt,
Attorney for Reconstruction Finance Corporation.

UNITED STATES OF AMERICA,
By Harry C. Blanton,
Attorney for United States of America.

GUARANTY TRUST COMPANY
OF NEW YORK and
BENJAMIN F. EDWARDS,
Trustee under the First and Refunding Mortgage of the Missouri Pacific Railroad Company,

By Nagel, Kirby, Orrick & Shepley,
Attorneys for Guaranty Trust Company of New York and Benjamin F. Edwards, Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company.

L. W. BALDWIN and
GUY A. THOMPSON,
Trustees in Reorganization of the Missouri Pacific Railroad Company,
By Edw. J. White,
Attorney for L. W. Baldwin and Guy A. Thompson, Trustees in Reorganization of the Missouri Pacific Railroad Company.

316 Solicitors for Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage due May 1, 1933,

By James H. McIntosh, Edward W. Bourne and Thos. W. White,
Solicitors for Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage due May 1, 1933.

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St. Louis, Iron Mountain and Southern Railway Company
to
The Mercantile Trust Company
and
William K. Bixby.
River and Gulf Divisions
First Mortgage,
Dated May 1, 1903,
securing

River and Gulf Divisions First Mortgage Four Per Cent. Thirty-Year Gold Bonds.

Interest payable May 1st and November 1st.

Due May 1, 1933.

Assistant Secretary's File No. 703.

319

Indenture, dated the first day of May, in the year Nineteen hundred and three, by and between ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, a consolidated corporation created by and existing under the laws of the States of Missouri and Arkansas (hereinafter called the RAILWAY COMPANY), party of the first part, and THE MERCANTILE TRUST COMPANY, a corporation created by and existing under the laws of the State of New York, and William K. Bixby, a citizen and resident of the City of St. Louis, State of Missouri (hereinafter called the TRUSTEES), parties of the second part:

Parties.*

Lines of Railway heretofore owned and operated by the Railway Company.

WHEREAS, the RAILWAY COMPANY owns and operates a main line of railway extending from St. Louis, in the State of Missouri, through the States of Missouri and Arkansas, to Texarkana, on the boundary line between the States of Arkansas and Texas, together with certain branches, including a branch to Alexandria, in the State of Louisiana, the aggregate length of such main line and branches being about 1428.65 miles; and

Line acquired from the White River Railway Company.

WHEREAS, the RAILWAY COMPANY has acquired and now owns all of the railroad, property, real and personal, rights, privileges and franchises formerly belonging to the White River Railway Company, a corporation of the State of Arkansas,

* The marginal notes are omitted in the original mortgage.

which line of railroad as now constructed connects with the line of railroad owned by the RAILWAY COMPANY at a point at or near Batesville, in the County of Independence, State of Arkansas, and is authorized to be constructed in a generally northwesterly direction through Independence, Izard, Baxter, Marion and Boone Counties in the State of Arkansas to a point on the boundary line between the States of Arkansas and Missouri; thence in a northerly and northwesterly direction through Taney, Stone, Barry, Lawrence and Jasper Counties in the State of Missouri, to a connection with the Lexington and Southern Division of the Missouri Pacific Railway at or near Carthage in said County of Jasper, a total distance of 248 miles, more or less.

320

Lines acquired from the St. Louis Valley Railway.

WHEREAS, the RAILWAY COMPANY has acquired and now owns all of the railroad and property, real and personal, rights, privileges and franchises formerly belonging to the St. Louis Valley Railway, a corporation of the State of Illinois, including a line of railroad extending from East St. Louis to Thebes, with a branch line from Fordyce Station to a point at or near the north boundary line of Williamson County, all in the State of Illinois, a total distance of 145 miles, more or less; also the railroad, constructed and to be constructed, lately purchased and acquired by the St. Louis Valley Railway from St. Louis Valley Transfer Railway, beginning at a point of connection with the line of railway formerly belonging to the St. Louis Valley Railway near the intersection of the Waterloo and East Carondelet Turnpike Road with the late St. Louis Valley Railway, and running thence in a westerly direction to the Mississippi River, a distance of about 4.7 miles, more or less; together with a branch railroad beginning at Lot No. 23 in Prairie Du Pont Commons, and running thence in a northerly direction to a point near the Station of Dupo on the late St. Louis Valley Railway, being about 2.4 miles in length; making a total of 7.2 miles of additional railroad, constructed and to be constructed, all in the County of St. Clair, State of Illinois, formerly owned by the St. Louis Valley Railway, and purchased and acquired by the RAILWAY COMPANY

with the St. Louis Valley Railway before mentioned and described; also a ferry line across the Mississippi River at or near East St. Louis and ferry, terminal and yard facilities and property at or near the City of St. Louis, Missouri, and the Cities of East St. Louis and Thebes, in the State
321 of Illinois; and

Line acquired from the Memphis, Helena and Louisiana Railway Company.

WHEREAS, the RAILWAY COMPANY has acquired and now owns all of the railroad and property, real and personal, rights, privileges and franchises formerly belonging to the Memphis, Helena and Louisiana Railway Company, a corporation of the State of Arkansas, which railroad is authorized to be constructed from a point of connection with the railroad of the RAILWAY COMPANY at or near West Memphis, Crittenden County, Arkansas, in a generally southwesterly and southerly direction following the line of the Mississippi River, through the Counties of Crittenden, St. Francis, Lee, Phillips, Arkansas, Desha and Chicot to the boundary line between the States of Arkansas and Louisiana, a distance of 172 miles, more or less; and

Line acquired from the Memphis, Helena and Louisiana Railroad Company.

WHEREAS, the RAILWAY COMPANY has acquired and now owns all of the railroad and property, real and personal, rights, privileges and franchises formerly belonging to the Memphis, Helena and Louisiana Railroad Company, a corporation of the State of Louisiana, which line of railroad is authorized to be constructed from a point of connection with the railroad formerly belonging to the Memphis, Helena and Louisiana Railway Company on the boundary line between the States of Arkansas and Louisiana in a generally southerly direction to a connection with the Texas and Pacific Railway at or near Clayton, in the State of Louisiana, a distance of 102 miles, more or less; and

Extent of proposed System.

WHEREAS, the lines of railroad constructed and authorized to be constructed as aforesaid, together with the lines of railroad hereinafter provided for, will when completed constitute a system of railroads extending from a point at or near St. Louis, thence by ferry to or near East St. Louis, and thence along the East side of the Mis-

sissippi River to a bridge now being constructed at Thebes, Illinois, and from a point of connection with the said bridge at or near Gray's Point,
322 in the State of Missouri, along the West side of the Mississippi River to a connection with the line of railroad of the Texas and Pacific Railway Company at or near Clayton, Concordia Parish in the State of Louisiana, and also from a point at or near West Memphis to a connection with the line of railroad of The Missouri Pacific Railway Company at or near Carthage, Missouri; and

Securities pledged.

WHEREAS, the RAILWAY COMPANY has acquired $148,000 par value of the First Mortgage bonds, being all of said bonds issued and outstanding, of the Union Railway Company, a corporation of the State of Tennessee, and owning certain terminals, terminal facilities and railroads at or near the City of Memphis, in the State of Tennessee, and desires to provide for the acquisition from time to time of additional First Mortgage bonds of said Union Railway Company as the same are issued, which bonds are issued under a mortgage of said company dated July 23, 1902, to The Mercantile Trust Company, as Trustee, and are part of an authorized issue under said mortgage not exceeding in the aggregate the principal sum of $1,000,000; and

WHEREAS, the RAILWAY COMPANY has acquired $1,000,000 par value of the First Mortgage bonds (being all of said bonds) of the Western Coal and Mining Company, a corporation of the State of Missouri, which bonds bear date May 1, 1903, and by their terms mature on May 1, 1933, and bear interest at the rate of five per cent. per annum and are secured by a mortgage or deed of trust to Edwin G. Merriam, as Trustee, dated April 28, 1903; and

WHEREAS, the RAILWAY COMPANY desires to make provision for the acquisition of additional lands and terminal, ferry and yard facilities at or near the City of St. Louis, in the State of Missouri, and at or near the Cities of East St. Louis and Thebes, in the State of Illinois, and elsewhere; and

323 WHEREAS, the RAILWAY COMPANY desires to make provision for the completion and equipment of

the lines of railroad acquired by it as aforesaid, and the extension, equipment, improvement and permanent betterment of the same, and also desires to provide for the construction or acquisition of additional lines of railroad and for terminals, equipment and other property in connection with or necessary for the development of its railroad and property and the business thereof; and

WHEREAS, the RAILWAY COMPANY desires to make financial provision for the obligations incurred by it in connection with the acquisition of the railroads and property, rights, privileges and franchises hereinbefore described, and for the further construction and extension of said railroads, and for the construction or acquisition of branches and extensions thereof, and for acquiring property in connection therewith; and also desires to make financial provision for the construction or acquisition of other lines of connecting railroad and other property, and for other lawful corporate purposes; and

Resolution of the Board of Directors of the Railway Company authorizing issue of Bonds and execution of mortgage.

WHEREAS, for such purposes the Board of Directors and the stockholders of the RAILWAY COMPANY have duly authorized the creation and issue of Four per cent. bonds to be known as St. Louis, Iron Mountain and Southern Railway Company River and Gulf Divisions First Mortgage Four Per Cent. Thirty-Year Gold Bonds, to be coupon bonds with privilege for registration as to principal and exchangeable for fully registered bonds without coupons, or both coupon bonds and registered bonds without coupons, the coupon bonds to be dated the first day of May, 1903, and all such coupon bonds and registered bonds to be payable on the first day of May, 1933, and to bear interest at the rate of four per cent. per annum, payable semi-annually on the first days of May and November in each year (interest on the coupon bonds to date from May 1st, 1903), and both principal and interest being payable in the City of New York in gold coin of the United States of the
324 present standard of weight and fineness and without deduction for United States, State, County or Municipal taxes which the RAILWAY COMPANY may be required to pay thereon or to retain therefrom under any present or future law; the total

issue of said bonds for all purposes to be limited to the aggregate principal sum of $50,000,000 and all of said bonds to be equally secured by a mortgage or deed of trust to The Mercantile Trust Company, a corporation of the State of New York and William K. Bixby, a citizen and resident of St. Louis, State of Missouri, as TRUSTEES, constituting a first lien upon all the railroad, constructed, in process of construction and hereafter to be constructed, property and franchises, obligations, stocks, bonds and other securities, branches, extensions, additions and other property specifically described in and conveyed by said mortgage or deed of trust, as well as all other property of every kind and description constructed or acquired by the RAILWAY COMPANY by the use of said bonds or which may from time to time be expressly transferred, assigned or mortgaged by the RAILWAY COMPANY or by any one in its behalf to the TRUSTEES of said mortgage; and

Bonded indebtedness not in excess of authorized capital stock.

WHEREAS, the bonded indebtedness of the RAILWAY COMPANY, including that to be secured by this Indenture, does not exceed in the aggregate the amount of its authorized capital stock; and

Denomination of Bonds.

WHEREAS, the bonds to be secured by this Indenture are to be coupon bonds of the denomination of $1,000, numbered consecutively from one upwards and registered bonds, to be designated as such on their face, of the denomination of $1,000 and such multiples thereof as the RAILWAY COMPANY from time to time, by resolution of its Board of Directors or Executive Committee, may authorize; every such registered bond bearing some distinctive number or designation, and all coupon bonds and registered bonds respectively to be substantially of the following tenor:

325

[FORM OF COUPON BOND.]

No. $1,000.

UNITED STATES OF AMERICA.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY.

RIVER AND GULF DIVISIONS FIRST MORTGAGE FOUR PER CENT. THIRTY-YEAR GOLD BOND.

Form of Coupon Bond.

St. Louis, Iron Mountain and Southern Railway Company (hereinafter termed the RAILWAY COMPANY), for value received, promises to pay on

the first day of May, one thousand nine hundred and thirty-three, at its office or agency in the City of New York, to the bearer, or, if this bond be registered, then to the registered holder hereof, One Thousand Dollars gold coin of the United States of the present standard of weight and fineness, and to pay interest thereon from May 1st, 1903, until the payment of this bond, at the rate of four per cent. per annum, such interest being payable at said office or agency in like gold coin semi-annually on the first days of May and November in each year, but only upon surrender for cancellation of the respective coupons for such interest hereto annexed. Both the principal and interest of this bond are payable without deduction for any tax or taxes which the RAILWAY COMPANY may be required to pay thereon or to retain therefrom under or by reason of any present or future law of the United States, or of any State, County or Municipality therein.

This bond is one of a series of coupon and registered bonds of the RAILWAY COMPANY known as St. Louis, Iron Mountain and Southern Railway Company River and Gulf Divisions First Mortgage Four Per Cent. Thirty-Year Gold Bonds,
326 duly authorized and approved by the Board of Directors and by the Stockholders of the RAILWAY COMPANY, to an amount not exceeding in the aggregate the principal sum of Fifty Million Dollars at any one time outstanding, all of which bonds are issued and to be issued under and in pursuance of and are equally secured by a mortgage or deed of trust dated May 1st, 1903, executed by the RAILWAY COMPANY to The Mercantile Trust Company, a corporation of the State of New York, and William K. Bixby, a citizen and resident of the City of St. Louis, State of Missouri, as TRUSTEES, of all the property and franchises described in said mortgage or deed of trust, to which reference is hereby made for a description of the property and franchises mortgaged or pledged, the nature and extent of the security, the rights of the holders of said bonds under the same, and the terms and conditions under which said bonds are issued and secured and are to be used.

If default shall be made in the payment of any semi-annual installment of interest on this bond, when the same shall become due and be demanded, and such installment shall remain unpaid for six months after such demand, the principal of this bond may become due and payable in the manner provided in said mortgage or deed of trust. This bond shall pass by delivery unless registered in the name of the owner on the books of the RAILWAY COMPANY at its office or agency in the City of New York, such registration being noted on the bond by the RAILWAY COMPANY. After such registration no transfer shall be valid unless made on said books by the registered holder in person or by attorney duly authorized and similarly noted on the bond; but the same may be discharged from registration by being transferred to bearer, and thereupon transferability by delivery shall be restored; but this bond may again from time to time be registered or transferred to bearer as before. Such registration, however, shall not affect the negotiability of the coupons, which shall continue to
327 be transferable by delivery. The holder of this bond may at his option surrender the same for cancellation, with all unmatured coupons thereto attached or appertaining, in exchange for a registered bond without coupons as provided in said mortgage or deed of trust. No recourse in any event shall be had for the payment of the principal or interest of this bond against any stockholder, director or officer of the RAILWAY COMPANY. This bond shall ~~not be valid~~ unless authenticated by the certificate endorsed hereon, executed by The Mercantile Trust Company, or its successor, as one of the TRUSTEES under said mortgage or deed of trust.

In Witness Whereof, St. Louis, Iron Mountain and Southern Railway Company has caused these presents to be signed by its President, or one of its Vice-Presidents, and its corporate seal, attested by its Secretary or one of its Assistant Secretaries, to be hereto affixed as of the first day of May, A. D. 1903, and the annexed interest coupons

to be executed with the engraved signature of its Treasurer.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY,
By
President.

Attest:

Secretary.

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328 [FORM OF REGISTERED BOND.]

No. $

UNITED STATES OF AMERICA.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY.

RIVER AND GULF DIVISIONS FIRST MORTGAGE FOUR PER CENT. THIRTY YEAR REGISTERED GOLD BOND.

Form of Registered Bond.

St. Louis, Iron Mountain and Southern Railway Company (hereinafter termed the RAILWAY COMPANY), for value received, promises to pay to
or registered assigns
on the first day of May, one thousand nine hundred and thirty-three, at its office or agency in the City of New York,
thousand dollars gold coin of the United States of the present standard of weight and fineness, and to pay interest thereon from the first day of May or November as the case may be, next preceding the date of this bond, until the payment of this bond, at the rate of four per cent. per annum, such interest being payable at said office or agency in like gold coin, semi-annually on the first days of May and November in each year. Both the principal and interest of this bond are payable without deduction for any tax or taxes which the RAILWAY COMPANY may be required to pay thereon or to retain therefrom under or by reason of any present or future law of the United States or of any State, County or Municipality therein.

This bond is one of a series of coupon and registered bonds of the RAILWAY COMPANY known as St. Louis, Iron Mountain and Southern Railway

Company River and Gulf Divisions First Mortgage Four Per Cent. Thirty Year Gold Bonds duly authorized and approved by the Board of Directors and by the Stockholders of the RAILWAY COMPANY to an amount not exceeding in the aggregate the principal sum of Fifty Million Dollars at any one time outstanding, all of which bonds are
329 issued and to be issued under and in pursuance of and are equally secured by a mortgage or deed of trust dated May 1st, 1903, executed by the RAILWAY COMPANY to The Mercantile Trust Company, a corporation of the State of New York, and William K. Bixby, a citizen and resident of the City of St. Louis, State of Missouri, as TRUSTEES of all the property and franchises described in said mortgage or deed of trust, to which reference is hereby made for a description of the property and franchises mortgaged or pledged, the nature and extent of the security, the rights of the holders of said bonds under the same, and the terms and conditions under which said bonds are issued and secured and are to be used.

If default shall be made in the payment of any semi-annual installment of interest on this bond when the same shall become due and be demanded, and such installment shall remain unpaid for six months after such demand, the principal of this bond may become due and payable in the manner provided in said mortgage or deed of trust. This bond is transferable by the registered holder thereof in person or by attorney duly authorized, upon the books of the RAILWAY COMPANY at its office or its agency in the City of New York, upon surrender for cancellation of this bond, and a new registered bond will be issued to the transferee in exchange therefor, or, at the request of the transferee a new coupon bond with coupons attached, maturing on and after the then next ensuing interest due date on this bond, will be issued for each $1,000 of the principal of this bond, as provided in said mortgage or deed of trust, and on payment, if the RAILWAY COMPANY shall so require, of the transfer fee therein provided for. No recourse in any event shall be had for the payment of the principal or interest of this bond against any stockholder, director or officer of the RAILWAY COMPANY. This bond shall not be valid unless authenticated

by the certificate endorsed hereon executed by The Mercantile Trust Company or its successor as one of the TRUSTEES under said mortgage or deed of trust.

330 IN WITNESS WHEREOF, St. Louis, Iron Mountain and Southern Railway Company has caused these presents to be signed by its President, or one of its Vice-Presidents, and its corporate seal, attested by its Secretary or one of its Assistant Secretaries, to be hereto affixed this day of , 19 .

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY,
By
President.

Attest:
Secretary.

AND WHEREAS, there shall be annexed to said coupon bonds at the time of the issue thereof coupons representing the semi-annual interest instalments which may become due thereon, which coupons shall be substantially in the following form:

[FORM OF COUPON.]

No. $20.

Form of interest coupon.

On the first day of St. Louis, Iron Mountain and Southern Railway Company will pay to the bearer, at its office or financial agency in the City of New York, Twenty dollars in United States gold coin without deduction for taxes, being the semi-annual interest then due on its River and Gulf Divisions First Mortgage Four Per Cent. Thirty-Year Gold bond No.

Treasurer.

Style of Treasurer's Signature.

AND WHEREAS, each of the coupons to be attached to said coupon bonds shall be authenticated by the engraved fac-simile of the signature of the present Treasurer or of any future Treasurer of the RAILWAY COMPANY, it being intended that the RAILWAY COMPANY may take and use for that purpose the engraved fac-simile of the signature

of any person who shall have been such Treasurer notwithstanding the fact that he may have ceased
331 to be such Treasurer at the time when such bonds shall be actually certified and delivered, or when such coupons shall be attached to the bonds; and

Date of Bonds

WHEREAS, said bonds shall be signed on behalf of the RAILWAY COMPANY as of the date of the same by its present or any future President and Secretary, or by one of its present or future Vice-Presidents and Assistant Secretaries; and

WHEREAS, there shall be endorsed upon each of the coupon bonds and registered bonds secured hereby a certificate of The Mercantile Trust Company, one of the TRUSTEES hereunder, or of its successor appointed hereunder, that such bond is one of a series of bonds herein described, and no bond shall be valid or obligatory for any purpose until such certificate shall have been executed by the said TRUSTEE, such certificate to be substantially in the following form:

[FORM OF TRUSTEE'S CERTIFICATE.]

Form of Trustee's Certificate.

This bond is one of a series of bonds described in the within mentioned mortgage or deed of trust executed by St. Louis, Iron Mountain and Southern Railway Company to the undersigned and William K. Bixby as TRUSTEES.

THE MERCANTILE TRUST COMPANY,

Trustee.

By

President.

Action by the Stockholders of the Railway Company.

AND WHEREAS, at a meeting of the stockholders of the RAILWAY COMPANY held on the 30th day of April, 1903, pursuant to notice duly given as required by law, the holders of more than ninety per cent. of the entire issued and outstanding capital stock of the RAILWAY COMPANY concurred to, consented to and authorized the increase of the bonded indebtedness of the RAILWAY COMPANY by the issue of the bonds hereby secured, and the execution of this Indenture, and also assented to and approved of the acquisition of the railroads, property and franchises hereby mortgaged or pledged;
332 and

Authorization by Board of Directors of the Railway Company.

WHEREAS, the execution and delivery of this Indenture in the form hereof and the issue as herein provided of the series of coupon and registered bonds hereby secured have been duly authorized and approved by the Board of Directors of the RAILWAY COMPANY, and in pursuance of all and every legal power and authority in it vested, the RAILWAY COMPANY has executed this Indenture and proposes from time to time to execute and issue such bonds;

Now, Therefore, this Indenture Witnesseth:

That, in order to secure the payment of the principal and interest of all such bonds at any time issued and outstanding under this Indenture, according to their tenor and effect, and the performance of all the covenants and conditions herein contained, and in consideration of the premises and of the purchase and acceptance of such bonds by the holders thereof and of the sum of One Dollar to it duly paid by the TRUSTEES, at or before the ensealing or delivery of these presents, the receipt whereof is hereby acknowledged, the RAILWAY COMPANY, party of the first part, has executed and delivered these presents, and has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over, and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer and set over unto the TRUSTEES, parties of the second part, their successors and assigns forever,

Granting Clause.

All and singular the following lines of railroad of the RAILWAY COMPANY, party hereto of the first part, constructed and to be constructed namely:

Description of Mortgaged premises.

All and singular the main line of railroad formerly belonging to the St. Louis Valley Railway constructed and authorized to be constructed, beginning at a point in or near the City of East St. Louis in St. Clair County in the State of Illinois and extending thence, through said St. Clair County and through and into the Counties of
333 Monroe, Randolph, Jackson, Union and Alexander to a point at or near the City of Cairo in Alexander County in said State; the portion of railroad now actually constructed extending from East St.

Louis in St. Clair County, Illinois, southwesterly and southeasterly through St. Clair County and through the Counties of Monroe, Randolph, Jackson and Union and extending into the County of Alexander to a connection with the bridge approach and bridge tracks of the Southern Illinois and Missouri Bridge Company, at or near Thebes in said County of Alexander; and extending from Fordyce Station in Jackson County, Illinois, in a northeasterly direction via the City of Murphysboro through Jackson and Williamson Counties to the North line of Williamson County;

Also the railroad, constructed and to be constructed, lately purchased and acquired by the St. Louis Valley Railway from the St. Louis Valley Transfer Railway, beginning at a point of connection with the line of railway formerly belonging to the St. Louis Valley Railway near the intersection of the Waterloo and East Carondelet Turnpike Road with the late St. Louis Valley Railway, and running thence in a westerly direction to the Mississippi River, a distance of about 4.7 miles, more or less; together with a branch railroad beginning at Lot No. 23 in Prairie Du Pont Commons, and running thence in a northerly direction to a point near the Station of Dupo on the late St. Louis Valley Railway, being about 2.5 miles in length; making a total of 7.2 miles of additional railroad, constructed and to be constructed, all in the County of Clair, State of Illinois, formerly owned by the St. Louis Valley Railway, and purchased and acquired by the RAILWAY COMPANY with the St. Louis Valley Railway before mentioned and described, with ferry and transfer properties and facilities on the banks of and across the Mississippi River to yards, terminals and ferry facilities upon the west bank of said Mississippi River.

All and singular the main line of railroad formerly belonging to the Memphis, Helena and Louisi-
334 ana Railway Company constructed and to be constructed, beginning at a point on the Memphis branch of the Railway Company in the County of Crittenden, State of Arkansas, and extending thence in a generally southwesterly and southerly direction through the Counties of Crittenden, St.

Francis, Lee, Phillips, Arkansas, Desha and Chicot, all in the State of Arkansas, to a point on the boundary line between the States of Arkansas and Louisiana.

All and singular the main line of railroad formerly belonging to the Memphis, Helena and Louisiana Railroad Company constructed and to be constructed, beginning at a point of connection with the line of railroad owned by the Railway Company and formerly belonging to the Memphis, Helena and Louisiana Railway Company on the boundary line between the States of Arkansas and Louisiana and running thence in a southerly direction through the parishes of East Carroll, Madison, Tensas and Concordia to a point of connection with the railroad of the New Orleans and Northwestern Railroad Company near Clayton in the said parish of Concordia and State of Louisiana.

All and singular the line of railroad formerly belonging to the White River Railway Company, constructed and to be constructed from a point at or near Batesville, Independence County, State of Arkansas, on the White River branch of the RAILWAY COMPANY and extending in a generally northwesterly direction through the Counties of Independence, Izard, Baxter, Marion and Boone in the State of Arkansas to a point on the boundary line between the States of Arkansas and Missouri, thence in a northerly and northwesterly direction through the counties of Taney, Stone, Barry, Lawrence and Jasper in the State of Missouri to a connection with the Lexington and Southern Division of the Missouri Pacific Railway at or near the City of Carthage in said County of Jasper.

Also, all railroads, lines of railroads, extensions and branches, together with all lands, equipment,
335 property, rights and franchises connected therewith, or with the use and operation thereof, and all other property, real and personal, of whatever kind or description which may be constructed or acquired by the use of bonds or proceeds of bonds issued hereunder as in this Indenture provided.

INCLUDING, ALSO, any and all roadbed, superstructure, rights of way, rails, tracks, sidetracks,

bridges, viaducts, buildings, depots, stations, warehouses, car-houses, engine-houses, freight-houses, coal-houses, wood-houses, machine-shops and other shops, turn-tables, water-stations, fences, docks, ferries, ferry and transfer equipment, structures, erections and fixtures, and all other things of whatever kind, now owned or hereafter acquired by the RAILWAY COMPANY or its successors in any wise and at any time belonging or appertaining to or provided for use upon or in connection with any line of railway, extension, branch or other property now owned by the RAILWAY COMPANY or hereafter acquired by it and subject to the lien of this Indenture; and any and all lands designed for depots, warehouses or other structures at any terminus, or on or along any line of railway, extension or branch now or at any time hereafter subject to the lien hereof, but not including any lands outside of the right of way, depot grounds, terminal and other facilities and not necessarily appurtenant to the use and operation of said railway, its extensions, branches and other property subject to the lien of this Indenture; and any and all locomotives, engines, cars and other rolling stock, equipment, machinery, instruments, tools, implements, materials, furniture and other chattels, wheresoever situated, now or hereafter held, acquired, or provided for use upon any line of railway, extension or branch now or hereafter, subject to the lien hereof, and any and all leaseholds, leases, rights under leases, or contracts, trackage agreements or operating arrangements, covenants and agreements, terms or parts of terms, including the right to use the bridge of the Southern Illinois and Missouri Bridge Company across the Mississippi River between Thebes, Illinois, and Gray's Point, Missouri, and any and all other property, real and personal, of every kind and description, now owned or hereafter acquired by the RAILWAY COMPANY for use upon, or in connection with, or for the purposes of, any such line of railway, extension or branch, now or at any time subject to the lien hereof; and any and all corporate or other rights, privileges and franchises which the RAILWAY COMPANY now has, or which the RAILWAY COMPANY or its successors hereafter shall acquire, possess or exercise, for, or appertaining to,

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the construction, maintenance, use or operation of any and all lines of railway, extensions and branches and any part thereof, which are now or hereafter may become subject to the lien of this Indenture; and any and all the rents, issues, profits, tolls and other income of all lines of railway, extensions and branches, and any part thereof, which are now or may hereafter become subject to the lien hereof, and any and all the rights, privileges, franchises, properties, real or personal, rights and things which the RAILWAY COMPANY now owns or hereafter shall possess, or become entitled to possess, for the purpose of, or in connection with, any such line of railway, extension or branch now or hereafter subject to the lien of this Indenture;

Also the following-described bonds owned by the RAILWAY COMPANY, which bonds have at or before the time of the execution of this Indenture been deposited and pledged with the Trust Company as part of the security hereunder, namely:

$148,000, par value, of the First Mortgage bonds of the Union Railway Company, a corporation of the State of Tennessee; and

$1,000,000 par value, of the First Mortgage bonds of the Western Coal and Mining Company, a corporation of the State of Missouri.

337 ALSO ANY AND ALL OTHER PROPERTY of any kind, including bonds and other securities, claims and stocks which, from time to time hereafter, may be expressly conveyed and mortgaged, or delivered, or by writing of any kind assigned or transferred by the RAILWAY COMPANY or by any one with its consent in its behalf, to the TRUSTEES, or either of them, hereunder; the TRUSTEES being hereby authorized, with the consent or approval of the RAILWAY COMPANY, at any and all times to receive any such property as and for additional security for the bonds issued and to be issued hereunder and to hold and apply any and all such property subject to the trusts of this Indenture: *Provided, however,* and it is hereby expressly covenanted and declared, that any conveyance, mortgage, assignment or transfer, pursuant to the provisions of this clause of any prop-

erty not acquired by the use of bonds or proceeds of bonds issued hereunder as and for additional security, may be made subject to any reservations, limitations, conditions and provisions which shall be set forth in an instrument in writing, then executed by the TRUSTEES or by the TRUST COMPANY and by the RAILWAY COMPANY, respecting the use, management and disposition of such additional property or the proceeds thereof;

And it is hereby covenanted and agreed that The Mercantile Trust Company, one of the TRUSTEES hereunder, or any Trustee which shall be appointed its successor in the trust hereunder, shall receive and shall retain as one of the TRUSTEES hereunder the sole custody and possession of all bonds and other securities and the certificates for all stocks and also all moneys which the TRUSTEES or either of them shall at any time become entitled to receive or possess hereunder.

TOGETHER WITH all the right, title, estate, interest and property which the RAILWAY COMPANY now has, or at any time hereafter may acquire, in or to any of the franchises, lines of railway, extensions, branches, and other properties, real, personal or mixed, hereby mortgaged, conveyed and assigned, or intended so to be.

338 AND IT IS COVENANTED AND DECLARED, that all railroads, franchises, rolling stock, stocks, bonds or other securities and property of every kind and description and any interest therein which, by any covenant or provision of this Indenture, the RAILWAY COMPANY has subjected, or agreed to subject, to the lien hereof, shall immediately when acquired by the RAILWAY COMPANY, and subject to the terms and conditions of such acquisition and without any further conveyance, assignment or delivery become and be subjected to the lien of this Indenture as fully and completely as though now owned by the RAILWAY COMPANY and expressly and specifically conveyed and embraced in the granting clauses of this Indenture; but the RAILWAY COMPANY covenants and agrees that at any and all times it will execute and deliver any and all further conveyances thereof and instruments of further assurance to the TRUSTEES, as the TRUSTEES or either of them may reasonably direct or

require for the purpose of expressly and specifically subjecting the same to the lien of this Indenture.

But it is hereby covenanted and declared that the RAILWAY COMPANY reserves the right, except as in this Indenture expressly otherwise provided, to acquire or construct any railroad, branch or extension and to acquire any stocks, bonds, securities and other property of any kind or description free from the lien of this Indenture; and any railroad, branch or extension and any stocks, bonds, securities and other property of any kind or description acquired by the RAILWAY COMPANY without the use of bonds or proceeds of bonds issued hereunder, or constructed or acquired by the use of any such bonds or the proceeds of any such bonds as may be delivered to the RAILWAY COMPANY as hereinafter provided in reimbursement of expenditures then already made out of other resources for any purpose for which bonds are hereinafter provided to be issued, shall be free from the lien of this Indenture unless specifically subjected thereto by an instrument in writing executed by the RAILWAY COMPANY or by any one
339 with its consent in its behalf to the TRUSTEES hereof.

Habendum. *To have and to hold* all and singular the said railroads, premises, property, real or personal, franchises, rights, estates, lands, appurtenances, stocks, bonds and other securities hereby conveyed and mortgaged, or intended so to be, unto the TRUSTEES, as joint tenants and not as tenants in common, their successors and assigns forever.

But the aforesaid grants are in trust, nevertheless, for the equal and proportionate benefit and security of all holders of the bonds and coupons issued and to be issued under and secured by this Indenture, and for the enforcement of the payment of said bonds and interest when payable according to their tenor, purport and effect, and to secure the performance and observance of and compliance with the covenants and conditions of this Indenture, without preference, priority or distinction as
Grant in Trust. to lien or otherwise of one bond over any other bond by reason of priority in the issue, sale or negotiation thereof, or of the purpose of their issue, so

that each and every bond issued as aforesaid shall have the same right, lien and privilege under and by virtue of this Indenture and so that the principal and interest of every such bond shall, subject to the terms hereof, be equally and proportionately secured hereby as if all had been duly issued, sold and negotiated simultaneously with the execution and delivery of this Indenture, it being intended that the lien and security of this Indenture shall take effect from the date of the execution and delivery hereof, without regard to the time of actual issue, sale or negotiation of said bonds, as though upon such date all of said bonds were actually issued, sold and delivered to and in the hands of holders thereof for value.

And it is covenanted and declared that all such bonds, with the coupons for interest thereon, are to be issued, certified and delivered, and that the
340 mortgaged premises are to be held by the TRUSTEES subject to the further covenants, conditions, uses and trusts hereinafter set forth, and it is hereby covenanted and agreed between the parties hereto, as follows, viz.:

Article First.

GENERAL PREREQUISITES TO ISSUE.

The bonds to be issued under and secured by this Indenture, together with the interest coupons pertaining thereto, shall be of substantially the tenor and purport above recited.

To bear Trust Company's Certificate.

Only such bonds as shall bear thereon endorsed a certificate substantially in the form hereinbefore recited, executed by THE MERCANTILE TRUST COMPANY (or its successor) one of the TRUSTEES hereunder, shall be secured by this Indenture or entitled to any lien, right or benefit hereunder; and such certificate of the TRUST COMPANY upon any such bond executed by the RAILWAY COMPANY shall be conclusive evidence that the bond so certified has been duly issued hereunder and that the holder is entitled to the benefit of the trust hereby created.

Matured Coupons to be canceled.

Before certifying or delivering any bond, all coupons thereon then matured shall be cut off, cancelled and delivered to the RAILWAY COMPANY; and the TRUST COMPANY shall not certify or deliver any registered bond bearing interest from a date more

than six months prior to such certification or delivery.

Authorized issue limited to $50,000,000.

The amount of the bonds hereby secured which may be executed by the RAILWAY COMPANY and which may be certified by the TRUST COMPANY is limited so that there shall never at any time be outstanding under this Indenture bonds for an aggregate principal sum exceeding Fifty Million Dollars ($50,000,000).

Temporary printed or lithographed bonds authorized.

Until the said coupon and registered bonds intended to be secured hereby can be engraved and prepared the RAILWAY COMPANY may execute and deliver printed or lithographed bonds, registered or negotiable by delivery, substantially of the tenor of
341 the bonds hereinbefore recited, except that no coupons shall be attached to said bonds; and the same may be for the payment of One thousand dollars ($1,000), or any multiple thereof, as the RAILWAY COMPANY shall determine. All such printed or lithographed bonds shall be dated May 1st, 1903, and shall bear upon their face the words "Temporary St. Louis Iron Mountain and Southern Railway Company River and Gulf Divisions First Mortgage Four Per Cent. Thirty Year Gold Bond," and shall be certified by the TRUST COMPANY in the same manner as the bonds hereinbefore described, and such certificate shall be conclusive evidence that the bond so certified has been duly issued hereunder, and that the owner thereof is entitled to the benefit of the trust hereby created. Such printed or lithographed bonds shall be exchangeable for engraved bonds to be issued hereunder, and, upon any such exchange, such printed or lithographed bonds shall be forthwith canceled by the TRUST COMPANY and delivered to the RAILWAY COMPANY for destruction. Until so exchanged, the said printed or lithographed bonds shall in all respects be entitled to the lien and security of these presents as bonds issued and certified hereunder, and interest when and as payable shall be paid and (except when registered) endorsed thereon. As long as any temporary bonds are outstanding a corresponding amount in face value of engraved bonds shall be withheld from certification by the TRUST COMPANY.

Trust Company shall certify and deliver all bonds issued hereunder, as provided in Article Second of this Indenture and not otherwise.

All temporary or engraved bonds to be secured hereby shall from time to time be executed and be delivered by the RAILWAY COMPANY to the TRUST COMPANY for certification, and thereupon the TRUST COMPANY shall certify and deliver the same, as provided in ARTICLE SECOND of this Indenture, and not otherwise. On request of the RAILWAY COMPANY the TRUST COMPANY shall so certify such bonds and shall deliver the same pursuant to the provisions of said ARTICLE SECOND, whether or not such delivery shall be in advance of the registration or recording of this Indenture.

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Article Second.

PURPOSES AND CONDITIONS OF ISSUE.

$1,000,000 reserved for the acquisition of the First Mortgage Bonds of the Union Railway Company.

SECTION 1. Of the bonds authorized to be issued under and secured by this Indenture, bonds in the aggregate principal amount of $1,000,000 shall be reserved to be certified and issued for the acquisition of First Mortgage Bonds of the Union Railway Company of Memphis. Bonds reserved under this Section in the principal amount of $148,000 shall immediately upon the execution and delivery of this Indenture be certified by the TRUST COMPANY and delivered to the RAILWAY COMPANY or upon its order.

Whenever the RAILWAY COMPANY shall deliver or cause to be delivered to the TRUST COMPANY any additional First Mortgage Bonds of the said Union Railway Company with all unmatured coupons thereunto belonging, the TRUST COMPANY shall thereupon receive the same and shall certify and deliver to the RAILWAY COMPANY or upon its order, an amount of bonds issued hereunder, and reserved under this Section, equal to the par amount of the First Mortgage Bonds of the said Union Railway Company so delivered to and received by it.

$7,200,000 to be issued immediately upon the execution of this Indenture as applicable to the acquisition of the railroad and property formerly belonging to the St. Louis Valley Railway.

SECTION 2. Of the bonds authorized to be issued under and secured by this Indenture, bonds in the aggregate principal amount of $7,200,000 shall immediately upon the execution and delivery hereof be certified by the TRUST COMPANY and delivered to the RAILWAY COMPANY or upon its order as applicable to, and representing the value of, the railroad and other property, including ferry and terminal

properties, hereby mortgaged and conveyed and formerly belonging to the St. Louis Valley Railway.

SECTION 3. Of the bonds authorized to be issued under and secured by this Indenture, bonds in the aggregate principal amount of $15,700,000, shall be reserved to be executed, certified and delivered only in the manner and for some one or more of the purposes in this Section stated, namely:

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$15,700,000 reserved to be issued for the acquisition, completion and extension of the lines of railroad formerly belonging to the White River Railway Company, the Memphis, Helena and Louisiana Railway Company and the Memphis, Helena and Louisiana Railroad Company.

The acquisition and the completion and extension of the lines of railroad hereinbefore described, formerly belonging to the White River Railway Company, the Memphis, Helena and Louisiana Railway company and the Memphis, Helena and Louisiana Railroad Company.

The restrictions subject to which the bonds reserved under this section shall be certified and delivered by the TRUST COMPANY and may be used are as follows, namely:

The amount of bonds reserved under this Section, which may be certified and delivered by the TRUST COMPANY and used by the RAILWAY COMPANY, shall never exceed in the aggregate $30,000 par value, for each completed mile of main line of the railroads in this Section mentioned (not including side-tracks and passing-tracks), which shall have been constructed or acquired by the RAILWAY COMPANY and which shall have been subjected to the lien of this Indenture as a first and paramount lien thereon.

Conditions governing issue.

The bonds reserved under this Section shall be certified and delivered from time to time by the TRUST COMPANY subject to the same restrictions and in the same manner as provided in Section 8 of this Article with reference to the issue of bonds reserved under said Section 8.

Unused bonds to become part of the reservation of bonds under Sec. 6 of this Article.

In case, after the completion of the lines of railroad referred to in this Section any of the bonds hereby secured and reserved under this Section shall remain unissued, such bonds remaining unissued shall thereafter be released from the restrictions in this Section contained and shall be certified by the TRUST COMPANY and delivered to the RAILWAY COMPANY for the purposes and subject to the restrictions contained in Section 6 of this Article.

A certificate signed by the President or a Vice-President and by the Chief Engineer of the RAILWAY COMPANY to the effect that said lines of rail-
344 road have been so completed, which certificate shall contain a description of said completed line or lines of railroad, shall be received by the TRUST COMPANY as conclusive evidence of the facts therein stated and shall be full authority and protection to the TRUST COMPANY in the premises.

$2,175,000 reserved to construct a second or double track along the line formerly belonging to the St. Louis Valley Railway.

SECTION 4. Of the bonds authorized to be issued under and secured by this Indenture bonds in the aggregate principal amount of $2,175,000, shall be reserved to be executed, certified and delivered for the purpose of the construction of a second or double track along the line of railroad of the RAILWAY COMPANY formerly owned by the St. Louis Valley Railway, which line of railroad is hereinbefore described and hereby mortgaged.

The amount of bonds reserved under this section which may be certified and delivered by the TRUST COMPANY and used by the RAILWAY COMPANY shall never exceed in the aggregate $15,000 par value for each completed mile of second or double track along the line of railroad in this Section mentioned and said bonds shall be certified and delivered by the TRUST COMPANY upon the terms and conditions set forth and contained in Section 8 of this Article.

Unused bonds to become part of the reservation of bonds under Sec. 6 of this Article.

Whenever the RAILWAY COMPANY shall by resolution of its Board of Directors or Executive Committee, a certified copy of which resolution shall be delivered to the TRUST COMPANY, certify and state that the bonds reserved under this section or such portion of said bonds as may then remain unissued, are no longer required for the purposes in this Section mentioned, the TRUST COMPANY shall release said bonds from the terms and conditions of this Section, and thereupon said bonds shall be held by the TRUST COMPANY subject to all the terms and conditions in Section 6 of this Article set forth and shall be certified from time to time as in said Section 6 provided.

SECTION 5. Of the bonds authorized to be issued
345 under and secured by this Indenture bonds in the aggregate principal amount of $2,500,000 shall be

$2,500,000 reserved to acquire terminal and ferry property, equipment and facilities at or near St. Louis, Missouri, and East St. Louis and Thebes, Illinois.

reserved to be executed, certified and delivered for the purpose of acquiring additional terminal and ferry properties and equipment and terminal and ferry facilities, or the capital stock and mortgage bonds, if any, of any company or companies owning or controlling such properties, equipment and facilities, at or near the City of St. Louis, State of Missouri, and at or near the cities of East St. Louis and Thebes in the State of Illinois, and appurtenant to or used in connection with the lines of railroad of the RAILWAY COMPANY subject to the lien of this Indenture.

The restrictions subject to which the bonds reserved under this Section shall be certified and delivered from time to time by the TRUST COMPANY and may be used, are as follows, viz.:

Before certifying and delivering any such bonds reserved under this Section, there shall be delivered to the TRUST COMPANY, a certificate signed by the President or a Vice-President and by the Treasurer, or Auditor of the RAILWAY COMPANY, stating and certifying

Certificate of President or a Vice-President and Treasurer or Auditor of the Railway Company required.

(a) The expenditures made by the RAILWAY COMPANY for which reimbursement is desired out of the proceeds of such bonds, and a description of the terminal and ferry properties, equipment and facilities acquired or constructed, and the amount expended therefor.

(b) A description of any bonds and shares of stock of any other company which have been acquired by the RAILWAY COMPANY and the cost thereof and a description of the terminal and ferry properties, equipment and facilities owned or controlled by such company.

(c) That none of the expenditures so certified were included in any certificate furnished to the TRUST COMPANY under any provision of this Indenture, and that the RAILWAY COMPANY has not been reimbursed therefor by the use of any bonds secured by this Indenture of the proceeds of any bonds or out of any funds under this Indenture.

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(d) The actual price for which the RAILWAY COMPANY has sold or agreed to sell the

bonds called for by said certificate or, in the event that it has not agreed to sell the same, the average market price of said bonds during the calendar month previous to the date of said certificate upon the New York Stock Exchange, or in the event of no sale upon said Exchange during said month, then the price (but not less than the price at which the bonds immediately issuable hereunder are sold) for which the last sale of bonds issued under this Indenture has been made by the RAILWAY COMPANY;

Certificate of Chief Engineer required.

Together with such certificate there shall be delivered to the TRUST COMPANY a certificate of the Chief Engineer of the RAILWAY COMPANY containing a description of the terminal and ferry properties equipment and facilities referred to in the certificate above provided for and such instruments and conveyances as may be necessary to vest in the TRUSTEES upon the trusts of this Indenture, title to the terminal properties and facilities so acquired or constructed by the RAILWAY COMPANY and all bonds and certificates, assigned in blank for transfer, for all shares of stock so acquired, and the opinion of counsel of the RAILWAY COMPANY to the effect that such instruments and conveyances are sufficient for that purpose, or the opinion of said counsel that no such instruments or conveyances are necessary.

Title to property to be satisfactorily vested in the Trustees.

Full authority and protection to the Trust Company.

Upon the receipt by the TRUST COMPANY of said certificates and other instruments, the TRUST COMPANY shall forthwith certify and deliver to the RAILWAY COMPANY, or upon its order, such an amount of bonds issued hereunder and reserved under the provisions of this Section as will, when taken at the price stated in said certificate, be equal to the amount in said certificate certified to be the actual cost of the terminal properties, facilities and equipment or of the stock and bonds therein stated to have been constructed or made or acquired by the RAILWAY COMPANY. Such certificates and opinions shall be full authority and protection to the TRUST COMPANY for its certification of bonds under the foregoing provisions of this Section.

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$4,500,000 reserved to extend, develop and equip the system of railroads subject to the lien of this Indenture.

SECTION 6. Of the bonds authorized to be issued under and secured by this Indenture bonds in the aggregate principal amount of $4,500,000, together with such portion of the bonds authorized to be issued under and secured by this Indenture and reserved under the provisions of Sections 3 and 4 of this Article as may be released from the terms and restrictions of said Sections 3 and 4 as therein provided, shall be reserved to be certified by the TRUST COMPANY, and delivered to the RAILWAY COMPANY, or upon its order, but only for the following purposes or some one or more of them, and subject to the following restrictions, namely:

The purposes for which said bonds or their proceeds may be used are:

The construction or acquisition of second or double tracks, shops, depots, terminal properties, rolling stock and equipment and other additional property, real or personal, upon, along or appurtenant to or for use in connection with the lines of railroad, branches, extensions, terminal or ferry properties belonging to the RAILWAY COMPANY and subject to the lien of this Indenture at the time of such construction or acquisition, or belonging to any other company, all of whose mortgage bonds, if any, and all of whose outstanding capital stock (less the number of shares necessary to qualify directors) shall be subject to the lien of this Indenture; and the development and improvement of any of the railroads, branches, extensions, terminal or ferry properties, rolling stock, equipment, shops, depots or other property hereby mortgaged or conveyed, or which hereafter shall be constructed or acquired by the RAILWAY COMPANY and subjected to the lien of this Indenture, or which shall belong to any other company, all of whose mortgage bonds, if any, and all of whose outstanding capital stock (less the number of shares necessary to qualify directors) shall be subject to the lien of this Indenture and be held by the TRUST COMPANY, such development and improvements to include the fencing and ballasting of track not previously fenced or ballasted, and the substitution of steel or iron for wooden viaducts, trestles and bridges.

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Any such construction, acquisitions, developments and improvements may be made by and in the name of the RAILWAY COMPANY or by or for account of any other company described in this paragraph.

The restrictions subject to which bonds reserved under this section shall be certified and delivered from time to time by the TRUST COMPANY and may be used are as follows, viz.:

Certificate of the President or a Vice-President and Treasurer or Auditor required.

Before certifying and delivering any of the bonds reserved under this Section for any of the purposes therein specified, there shall be delivered to the TRUST COMPANY a certificate or certificates signed by the President or a Vice-President and by the Treasurer or Auditor of the RAILWAY COMPANY, certifying:

(A) The expenditures for which reimbursement is desired out of the proceeds of such bonds, indicating the amount and class of betterments or improvements made, and the shops, depots, terminal properties, rolling stock and equipment and other additional property constructed or acquired, and the amount actually expended for each and every such purpose; and

(B) That none of the expenditures so certified were included in any previous certificate furnished to the TRUST COMPANY under this Section, or under any other provision of this Indenture, and that the Company making such expenditures has not been reimbursed therefor out of any other funds provided by this Indenture; and

(C) The price at which the RAILWAY COMPANY has sold or agreed to sell the bonds called for by said certificate, or in the event that it has not agreed to sell the same, then the average price
349 upon the New York Stock Exchange during the previous calendar month of the bonds secured by this Indenture, or, in the event of no sale upon said Exchange during said month, then the price (but not less than the price at which the bonds immediately issuable hereunder are sold) for which the last sale of bonds issued under this Indenture has been made by the RAILWAY COMPANY.

Title to property to be satisfactorily vested in the Trustees.

Together with the certificate hereinbefore required by the provisions of this Section there shall be delivered to the TRUST COMPANY such instruments and conveyances as may be necessary to vest in the TRUSTEES, subject to the lien of this Indenture as a first and paramount lien thereon, any property so acquired or constructed by the RAILWAY COMPANY, and the opinion of counsel of the RAILWAY COMPANY to the effect that such instruments and conveyances are sufficient for that purpose, or the opinion of said counsel that no such instruments or conveyances are necessary.

All Equipment acquired by the use of bonds hereunder to be plainly marked: "River and Gulf Divisions First Mortgage Equipment."

In the event the certification of any bonds reserved under this Section of this Article is required for the purpose of providing for the purchase of equipment, the certificate above provided for shall contain a description of the equipment so purchased or to be purchased giving the character and numbers of such cars, locomotives, ferry or other equipment as may be specified in said certificate, and all of such equipment shall be plainly marked with the words "River and Gulf Divisions First Mortgage Equipment." The title to all equipment purchased by the use of bonds secured by this Indenture or the proceeds of such bonds shall be taken in the name of the RAILWAY COMPANY and shall belong to it and shall be subjected to the lien of this Indenture as a first and paramount lien thereon.

The TRUST COMPANY thereupon shall certify and deliver to the RAILWAY COMPANY or upon its order such an amount of bonds reserved under this section of this Article as will, when taken at
350 the price of such bonds, as specified in the certificate of the RAILWAY COMPANY, be equal to the amount of such expenditures as stated in said certificate. Such certificate and opinion shall be full authority and protection to the TRUST COMPANY for its certification of bonds under the foregoing provisions of this Section.

$5,675,000 reserved to construct and acquire lines of railroad constituting connecting lines between certain lines of railroad subject to the lien of this Indenture.

SECTION 7. Of the bonds authorized to be issued under and secured by this Indenture, bonds in the principal amount of $5,675,000, shall be reserved to be executed, certified and delivered for the purpose of constructing or acquiring lines of railroad, or the acquisition of all the mortgage bonds, if any, and all of the outstanding capital stock (except shares necessary for the qualification of

directors) of any company or companies owning such lines of railroad constituting connecting lines which shall be subject to this Indenture, as a first and paramount lien thereon.

1. Between the line of railroad formerly owned by the St. Louis Valley Railway and that formerly owned by the Memphis, Helena and Louisiana Railway Company, both of which lines are now owned by the RAILWAY COMPANY and are subject to the lien of this Indenture; and

2. Between a point at or near West Memphis on the line of railroad formerly owned by the Memphis, Helena and Louisiana Railway Company and a point at or near Batesville on the line of railroad formerly owned by the White River Railway Company, both of which lines are now owned by the RAILWAY COMPANY and are subject to the lien of this Indenture.

Conditions governing Issue.

The bonds reserved under the provisions of this section shall be issued in the same manner and subject to the same restrictions as provided in Section 8 of this Article with reference to the issue of bonds reserved under said Section 8.

Unused bonds to become part of the reservation of bonds under Sec. 8 of this Article.

In case after the completion of said connecting lines of railroad any part of the bonds reserved under this Section then remain unissued, the RAILWAY COMPANY may by resolution of its Board of Directors require the TRUST COMPANY to release, and the TRUST COMPANY shall thereupon release from the operation of this Section said bonds reserved thereunder or such portion of them as may then remain unissued, and said bonds when so released shall fall into and become subject to all of the provisions of Section 8 of this Article.

$11,250,000 reserved to construct and equip lines of railroad constituting extensions or branches of the system of railroads subject to the lien of this Indenture

SECTION 8. The remaining $11,250,000 par value of the bonds authorized to be issued under and secured by this Indenture, together with such portion of the bonds authorized to be issued under and secured by this Indenture, and reserved under the provisions of Section 7 of this Article, as may be released from the terms and restrictions of said Section 7, as therein provided, shall be reserved to be executed by the RAILWAY COMPANY and to be certified and delivered by the TRUST COMPANY and to be used by the RAILWAY COMPANY

from time to time for some one or more of the following purposes, but only as hereinafter provided and subject to the restrictions hereinafter in this Section stated, viz.:

The purposes for which such bonds or their proceeds may be used are:

(*a*) The construction or acquisition and equipment by the RAILWAY COMPANY of lines of railroad constituting extensions or branches connecting with the railroad of the RAILWAY COMPANY subject to the lien of this Indenture at the time of such construction or acquisition, or connecting with the railroad of any other company all of whose outstanding mortgage bonds, if any, and all of whose outstanding capital stock (less the number of shares necessary to qualify directors) shall at the time of such construction or acquisition be owned by the RAILWAY COMPANY and deposited with the TRUST COMPANY hereunder.

(*b*) The acquisition of all the mortgage bonds, if any, and all of the outstanding capital stock (less the number of shares necessary to qualify directors) of any company or companies owning any such extension or branch line.

352 (*c*) The construction or acquisition of extensions and branch lines by any company all the mortgage bonds, if any, and all of the outstanding capital stock of which (less the number of shares necessary to qualify directors) shall at the time of such construction or acquisition be subject to the lien of this Indenture and be held by the TRUST COMPANY.

All such railroad constructed or acquired shall either be constructed or acquired by the RAILWAY COMPANY and be subjected to this Indenture as a first and paramount lien thereon or shall be constructed or acquired by any other company all the mortgage bonds, if any, and all the shares of the capital stock of which (less the number of shares necessary to qualify directors) shall be subject to the lien of this Indenture and be held by the TRUST COMPANY.

The restrictions subject to which bonds reserved under this Section shall be certified and

delivered from time to time by the TRUST COMPANY, and may be used, are as follows, viz.:

Conditions governing issue.

The amount of bonds reserved under this section which may be certified and delivered by the TRUST COMPANY and used by the RAILWAY COMPANY shall never exceed in the aggregate $30,000 par value, for each completed mile of main line of railroad (not including side-tracks and passing tracks), and not to exceed in the aggregate $15,000, par value, for each completed mile of branch line of railroad constructed or acquired by the RAILWAY COMPANY and which shall have been conveyed and mortgaged to the TRUSTEES hereunder free from any prior lien, charge or encumbrance, and at the same rates respectively for each mile of main line or branch line owned, constructed or acquired by any other Company or Companies, all of the mortgage bonds, if any, and all of the outstanding capital stock of which (except the number of shares necessary to qualify directors) shall have been acquired by the RAILWAY COMPANY and shall have been pledged and deposited with the TRUST COMPANY hereunder.

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Certificate of the President or a Vice-President and Treasurer or Auditor of the Railway Company required.

Before certifying and delivering any such bonds there shall be delivered to the TRUST COMPANY a certificate, signed by the President or a Vice-President and by the Treasurer or Auditor of the RAILWAY COMPANY, stating and certifying.

(a) A description of the line of railroad, speciying whether the same is main line or branch line, and the number of completed miles thereof which have been constructed or acquired by the RAILWAY COMPANY and the actual cost thereof, and that such railroad is free from any lien, charge or incumbrance prior to the lien of this Indenture except undetermined claims incidental to construction.

(b) A description of any bonds and shares of stock of any other company which have been acquired by the RAILWAY COMPANY and the cost thereof and of the completed miles of main line or branch line of railroad of such company, and, also, that such bonds and shares of stock are all the outstanding bonds, and all the shares of the outstanding capital

stock (except the number of shares required to qualify directors) of such company.

(c) A description of the completed miles of main line or branch line railroad constructed or acquired and owned by any such other company, all of the bonds and shares of capital stock of which (except as aforesaid) shall then be held by the TRUST COMPANY.

(d) That none of the expenditures made on account of any construction or acquisition on account of which the RAILWAY COMPANY requests the certification and delivery of bonds hereunder were included in any previous certificate furnished under any Section of this Indenture and that the RAILWAY COMPANY has not been reimbursed therefor out of any funds under this Indenture.

(e) The actual price for which the RAILWAY COMPANY has sold or agreed to sell the
354 bonds called for by said certificate or, in the event that it has not agreed to sell the same, the average market price of said bonds during the calendar month previous to the date of said certificate upon the New York Stock Exchange, or in the event of no sale upon said Exchange during said month, then the price (but not less than the price at which the bonds immediately issuable hereunder are sold) at which the last sale of bonds issued under this Indenture was made by the RAILWAY COMPANY.

Certificate of Chief Engineer required.

Together with such certificate there shall be delivered to the TRUST COMPANY a certificate of the Chief Engineer of the RAILWAY COMPANY, containing a description of the line or lines of railroad mentioned and referred to in the certificate above provided for, and stating the number of completed miles of said railroad, and such instruments and conveyances as may be necessary to vest in the TRUSTEES, subject to the lien of this

Title to property to be satisfactorily vested in Trustees.

Indenture as a first and paramount lien thereon, any line of railroad so acquired and constructed, and all bonds and certificates, assigned in blank for transfer, for all shares of stock so acquired,

and the opinion of counsel of the RAILWAY COMPANY to the effect that such instruments and conveyances are sufficient for that purpose, or the opinion of said counsel that no such instruments or conveyances are necessary.

Full authority and protection guaranteed to the Trust Company.

Upon receipt by the TRUST COMPANY of such certificate and other instruments, the TRUST COMPANY shall forthwith certify and deliver to the RAILWAY COMPANY or upon its order, such an amount of bonds issued hereunder and reserved under the provisions of this Section as will, when taken at the price stated in said certificate, be equal to the amount in said certificate certified to be the cost of the line of railroad therein stated to have been acquired or constructed or of the bonds and shares of stock therein stated to have been acquired. Such certificates and opinion shall be full authority and protection to the TRUST COMPANY for its certification of bonds, under the foregoing provisions of this Section.

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Certain property free from the operation and lien of this Indenture.

SECTION 9. Any bonds certified and delivered under any provision of this Indenture in reimbursement of expenditures then already made by the RAILWAY COMPANY out of other resources, and the proceeds of said bonds, may be used by the RAILWAY COMPANY for any corporate purpose, and any property constructed or acquired by the RAILWAY COMPANY by the use of bonds certified and delivered in reimbursement of expenditures as aforesaid, or the proceeds of said bonds, shall be free from the lien of this Indenture.

Coupon Bonds exchangeable for registered bonds.

SECTION 10. Whenever any coupon bond or bonds issued hereunder, together with all unmatured coupons thereto belonging, shall be surrendered for exchange for registered bonds, the RAILWAY COMPANY shall execute, and the TRUST COMPANY shall certify and, in exchange for such coupon bond or bonds, shall deliver a like amount in registered bonds, without coupons. Such registered bonds shall be for $1,000, or for such multiples of $1,000 as the RAILWAY COMPANY from time to time, by resolution of its Board of Directors or Executive Committee, may prescribe, and shall bear interest at the same rate as the surrendered coupon bonds, and from the date of the last matured coupon thereof.

Registered bonds exchangeable for coupon bonds.

The registered holder of any registered bond or bonds may at his option at any time surrender the same to the RAILWAY COMPANY for cancellation, and receive in exchange therefor a like amount of the principal thereof in coupon bonds.

Transfer of Registered bonds.

Whenever any registered bond or bonds shall be surrendered, transferred and cancelled, the RAILWAY COMPANY shall execute and the TRUST COMPANY shall certify and shall deliver to the transferee a like amount of new registered bonds without coupons.

For any exchange of coupon bonds for registered bonds, or registered bonds for coupon bonds,
356 or for any transfer of registered bonds without coupons, the RAILWAY COMPANY, at its option, may make a charge sufficient to reimburse it for any stamp tax or other governmental charge required to be paid, and, in addition, the sum of one dollar for each new registered or coupon bond issued upon such exchange or transfer.

Lost, mutilated or destroyed bonds.

In case any coupon bond issued hereunder with the coupons thereto appertaining, or any registered bond without coupons, shall become mutilated or be destroyed, the RAILWAY COMPANY, in its discretion, may issue, and thereupon the TRUST COMPANY shall certify and deliver a new bond of like tenor and date (including coupons in case of a coupon bond) bearing the same serial number, in exchange and substitution for, and upon cancellation of, the mutilated coupon bond and its coupons, or the mutilated registered bond, or in lieu of, and substitution for, the coupon bond and its coupons or the registered bond so destroyed, upon receipt of evidence satisfactory to the RAILWAY COMPANY of the destruction of such coupon bond and its coupons, or of such registered bond, and upon receipt also of indemnity satisfactory to the RAILWAY COMPANY, and the RAILWAY COMPANY may charge for the issue of such new bond an amount sufficient to reimburse the RAILWAY COMPANY for the expense incurred by it in the issue of such new bond.

Provisions for benefit of parties hereto and bondholders hereunder.

SECTION 11. Nothing in this Article, or any other Article of this Indenture, expressed or implied, is intended, or shall be construed, to give to any person or corporation, other than the parties

hereto and the holders of bonds issued under and secured by this Indenture, any legal or equitable right, remedy or claim, under or in respect of this Indenture, or under any covenant, condition or provision herein contained; all its covenants, conditions and provisions being intended to be, and being, for the sole and exclusive benefit of the said
357 parties and of the holders of the bonds hereby secured.

Article Third.

Covenants of the Railway Company.

To pay principal and interest.

Section 1. The Railway Company covenants and agrees that it will duly and punctually pay or cause to be paid the principal and interest of every bond issued hereunder and secured hereby all in gold coin of the United States of America of or equal to the present standard of weight and fineness, at the dates and place and in the manner mentioned in such bond, or in the coupons thereto appertaining, without any deduction from either principal or interest for any tax or taxes which the Railway Company may be required to pay thereon or to retain therefrom under or by reason of any present or futue law of the United States or of any State, County or Municipality therein. The interest on coupon bonds shall be payable only upon surrender for cancellation of the respective coupons annexed to said bonds as such coupons respectively mature, and when and as paid, all coupons shall forthwith be cancelled.

Without deduction for any taxes.

To keep an office in City of New York where bonds and coupons may be presented for payment.

The Railway Company covenants and agrees that at all times until the payment of the principal of the bonds secured by this Indenture, it will keep an office or agency in the City of New York, where bonds and coupons may be presented for payment and where notices or demands in respect of said bonds and coupons may be served, and from time to time will give written notice to the Trustees of the place of such office or agency. In case the Railway Company shall fail to do so, presentation and demand may be made and notices served at the office of the Trust Company in the City of New York.

To keep the property covered by this Indenture free from any lien for taxes.

Section 2. Exclusively for the benefit of the holders of bonds issued hereunder, the Railway Company covenants and agrees that from time to time it will duly pay and discharge all taxes, as-

sessments and governmental charges (the lien of which would be prior or superior to the lien of this
358 Indenture) lawfully imposed upon the railroads, franchises, stocks, bonds and other property hereby mortgaged, pledged or assigned, or upon any part thereof, or upon the income or profits thereof, and also all taxes, assessments and governmental charges lawfully imposed upon the lien or interest under this Indenture of the TRUSTEES, or of the holders of the bonds hereby secured, in respect of the railroads and franchises, stocks, bonds and other property, subject to this Indenture, so that the lien and priority of this Indenture shall be fully preserved at the cost of the RAILWAY COMPANY without expense to the TRUSTEES or to the bondholders, and, if any company all of whose bonds and outstanding capital stock (less the number of shares necessary to qualify directors) shall have been acquired and pledged hereunder, at any time while such bonds and stock of such company shall be pledged hereunder, shall fail to pay any tax, assessment or charge lawfully imposed upon the property or franchises of such company or upon the income and profits thereof, then the RAILWAY COMPANY either will forthwith pay or cause the same to be paid, or will forthwith
Proviso. acquire and transfer to the TRUSTEES or the TRUST COMPANY the claim therefor; *provided, however,* that nothing in this section contained shall require the RAILWAY COMPANY to pay, acquire or make provision for any such tax, assessment or charge so long as in good faith the validity thereof shall be contested.

Not to extend the time for the payment of any claims for interest.

SECTION 3. In order to prevent any accumulation after maturity of coupons or of claims for interest upon registered bonds, the RAILWAY COMPANY agrees and covenants that it will not, directly or indirectly, extend or assent to the extension of the time for payment of any coupon or claim for interest upon any bond secured hereby, and that it will not, directly or indirectly, be a party to or approve any such arrangement by purchasing or funding such coupons or claims for interest upon registered bonds or in any other manner. In
359 case the time for payment of any such coupon or claim for interest shall be so extended, whether or not such extension be by or with the consent of

the RAILWAY COMPANY, such coupon or claim for interest shall not be entitled, in case of default hereunder, to the benefit or security of this Indenture, except subject to the prior payment in full of the principal of all bonds issued hereunder then outstanding, and of all matured coupons and claims for interest on such bonds, the payment of which has not been so extended.

To keep mortgaged premises in good working order and repair.

SECTION 4. The RAILWAY COMPANY covenants and agrees at all times to maintain, preserve and keep the mortgaged property and every part thereof, with the rolling stock, fixtures and appurtenances, and every part and parcel thereof, in thorough repair and working order and condition and supplied with motive power, rolling stock and equipment, and that it will from time to time make all needful and proper repairs, renewals, replacements, additions, betterments and improvements, so that the traffic and business thereof and every part thereof shall at all times be conducted with safety and expedition.

Not to suffer the creation of any lien prior hereto.

SECTION 5. The RAILWAY COMPANY covenants and agrees that this Indenture will always be kept and maintained to the extent that it now is, and may from time to time become, a valid lien upon all the railroad and appurtenances described and conveyed in the granting clause hereof, and upon all renewals, betterments and improvements thereto; that it will not voluntarily create, or suffer to be created, any debt, lien or charge which would be prior to the lien of these presents upon any property which shall have become subject to this Indenture or any part thereof, or upon the income thereof; and within three months after the same shall accrue it will pay or cause to be discharged, or will make adequate provision to satisfy and discharge all lawful claims and demands for labor,
360 materials, supplies or other objects, which, if unpaid, might by law be given precedence to this Indenture as a lien or charge upon such property or any part thereof or the income thereof; and if any company, all of whose bonds and outstanding capital stock (less the number of shares necessary to qualify directors) shall be subject to this Indenture shall voluntarily create or suffer to be created any additional lien or charge upon its prop-

erty or income, or shall create or shall suffer to be created any additional indebtedness other than indebtedness to the RAILWAY COMPANY, or indebtedness for the current expenses of such company, then the RAILWAY COMPANY will at once acquire such lien, charge or indebtedness and cause the same to be vested in the TRUSTEES, or the TRUST COMPANY, or will cause the same to be paid or discharged; *provided* that nothing in this section contained shall require the RAILWAY COMPANY to acquire or cause to be paid or discharge or make provision for any such debt, lien or charge so long as the validity thereof in good faith shall be contested.

Proviso.

To provide for the registration of bonds.

SECTION 6. The RAILWAY COMPANY covenants and agrees that at an office or agency to be maintained by it in the City of New York, or at some bank or trust company in said city, it will keep books for the registry of bonds issued hereunder, which books, at all reasonable times, shall be open to inspection by the TRUSTEES, and that, upon presentation for such purpose, the RAILWAY COMPANY will, under such reasonable regulations as it may prescribe, register therein the ownership of all registered bonds without coupons issued under this Indenture and any coupon bonds which shall be presented for that purpose.

Regulations of registration and transfer.

Upon presentation to the bond registrar or transfer agent at the place where such books of registry are kept of any coupon bond which shall have been registered as aforesaid and delivery of a written instrument of transfer, in a form approved by the RAILWAY COMPANY, executed by the registered holder for the time being, such bond shall be transferred upon such register. The registered holder of any coupon bond shall also have the right to cause the same to be registered as payable to bearer, in which case transferability by delivery shall be restored, and thereafter the principal of such bond shall be payable to any person presenting the same; but any such coupon bond registered as payable to bearer may be registered again in the name of the holder with the same effect as in the case of a first registration thereof. Successive registrations and transfers as aforesaid may be made, from time to time, as desired. Each reg-

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Registered coupon bonds may be discharged from registry.

istration shall be noted by the bond registrar or transfer agent of the RAILWAY COMPANY on the bond.

Transfer of registered bonds.

Any registered bond without coupons may be transferred at said office or agency by surrender of such bond to said bond registrar or transfer agent for cancellation, accompanied by the delivery of a written instrument of transfer in a form approved by the RAILWAY COMPANY, duly executed by the registered holder for the time being, and by payment of any charge imposed under Section 10 of Article Second hereof; and thereupon a new registered bond, or new registered bonds, for an equivalent aggregate principal sum, shall be issued to the transferee or transferees, as provided in said Section 10 of Article Second.

Exchange of registered bond for coupon bond or bonds.

Whenever any registered bond shall be surrendered for a coupon bond or bonds, the RAILWAY COMPANY shall issue and the TRUST COMPANY shall certify and deliver, in exchange for such registered bond, a like amount of the principal thereof, in coupon bonds with coupons attached maturing on and after the next date on which the interest would have become due on such surrendered registered bond. The numbers of the coupon bonds so to be issued shall correspond with the numbers of any coupon bonds theretofore exchanged for registered bonds.

Registration of coupon bond not to restrain negotiability of coupons.

Registration of any coupon bond, however, shall not restrain the negotiability of any coupon thereto belonging, but every such coupon shall continue to pass by delivery merely, and shall remain payable to bearer.

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Covenants of further assurance.

SECTION 7. Whenever demanded by the TRUSTEES, or by the TRUST COMPANY, the RAILWAY COMPANY will grant, convey, confirm, assign, transfer and set over unto the TRUSTEES the estate, right, title and interest of the RAILWAY COMPANY in or to all real or personal estate, corporate rights and franchises which, in any way or manner, it shall acquire as appurtenant to, or for use upon, the railroad hereby mortgaged, or any railroad or property which hereafter shall become subject to the lien of this Indenture; and it will also do, execute, acknowledge and deliver all and

every such further acts, deeds, transfers and assurances for the better assuring, conveying and confirming unto the TRUSTEES all and singular the premises, estates and property hereby conveyed, or intended so to be, or which the RAILWAY COMPANY has herein covenanted or agreed hereafter to convey or mortgage to the TRUSTEES, as the TRUST COMPANY shall reasonably require for better accomplishing the provisions and purposes of this Indenture, and for securing payment of the principal and interest of the bonds intended to be hereby secured.

Stocks and bonded indebtedness of Companies all of whose stock and bonds are pledged hereunder not to be increased, except as herein provided.

SECTION 8. Except as in this Indenture expressly authorized the RAILWAY COMPANY will not by its affirmative vote or consent, or by abstaining from voting, sanction or permit any increase of the capital stock of any company, all of whose outstanding capital stock (less the number of shares necessary to qualify directors) now is or hereafter shall be subject to this Indenture, or the creation of any indebtedness of any such company (except current accounts growing out of operation), or the issue or the guaranty of any bonds by any such company, or the creation of any mortgage or other lien upon the railroad or property of any such company unless effective provision be made that such indebtedness and the evidences thereof and such bonds issued or guaranteed and such mortgage or other lien and all such additional stock shall forthwith, upon the issue or creation thereof, be transferred to the TRUST COMPANY, by it to be
363 held subject to all the trusts of this Indenture; and all such additional stock shall be fully paid and non-assessable.

To preserve the security represented by pledged stocks.

Except as in this Indenture expressly authorized, the RAILWAY COMPANY will not, by its affirmative vote or consent, or by abstaining from voting, sanction or permit any company all of whose outstanding capital stock (less the number of shares necessary to qualify directors) now is or hereafter may be subject to the lien of this Indenture to sell or otherwise to dispose of or lease (unless such lease be upon the express condition that it shall terminate at the election of the TRUSTEES or of the TRUST COMPANY in case any default shall be made and shall continue as provided in Section

1 of ARTICLE FIFTH hereof) any railroad or bridge belonging to such company, or any property required for the operation thereof, except to the RAILWAY COMPANY or to some other company all of whose outstanding capital stock, except as aforesaid, shall then be held by the RAILWAY COMPANY, and be subject to the lien of this Indenture.

Certain claims and indebtedness to become subject to the lien of this indenture.

SECTION 9. Any and all claims or indebtedness, except claims or indebtedness arising out of current traffic, operating and other incidental obligations, which the RAILWAY COMPANY hereafter may acquire against any other company, all of whose outstanding capital stock, except as aforesaid, now is, or hereafter shall be, subject to this Indenture, shall (subject to the provisions in respect thereof in this Indenture contained) be and become subject to the lien of this Indenture, and if and when requested in writing by the TRUSTEES or by the TRUST COMPANY the RAILWAY COMPANY will execute to the TRUSTEES appropriate assignments thereof.

To use the bonds hereby secured for the purposes herein prescribed.

SECTION 10. The RAILWAY COMPANY will not issue, negotiate, sell, hypothecate or dispose of any bonds hereby secured in any manner other than in accordance with the provisions of this Indenture and the agreements in that behalf herein contained; and, in issuing, selling, hypothecating, negotiating or otherwise disposing of such bonds, from time to time, it will well and truly apply, or cause to be applied, the same, or the proceeds thereof, only to and for some one or more of the purposes in this Indenture prescribed.

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To preserve unencumbered stock hereby pledged.

SECTION 11. Except subject to the lien hereof, or as herein otherwise expressly provided, the RAILWAY COMPANY will not sell, encumber, or by any voluntary act, part with its ownership of or title to any shares of stock of any company which shall have been pledged or assigned hereunder, or its equity of redemption therein, or the voting power thereon.

Article Fourth.

PROVISIONS RELATING TO PLEDGED SECURITIES.

Bonds may be stamped.

SECTION 1. THE MERCANTILE TRUST COMPANY (one of the TRUSTEES) is authorized to cause any and all coupon bonds which at any time may be

delivered to it as security under any of the provisions of this Indenture, to be stamped "Not negotiable. Held by The Mercantile Trust Company as TRUSTEE under the St. Louis, Iron Mountain and Southern Railway Company River and Gulf Divisions First Mortgage."

Railway Company entitled to interest and dividends on pledged securities.

SECTION 2. It is hereby expressly agreed that while and so long as there shall be no default in the payment of the principal or interest of any of the bonds secured hereby, or unless the RAILWAY COMPANY shall have voluntarily surrendered possession of the mortgaged premises as herein authorized, the stocks, bonds or other securities which may be subject hereto, shall be registered in the name of the RAILWAY COMPANY or its nominee or nominees, and the TRUST COMPANY shall detach and deliver to the RAILWAY COMPANY all coupons, as the same may mature upon all bonds deposited and pledged under this Indenture. And said TRUST COMPANY shall execute and deliver to the RAILWAY COMPANY, upon the written order of
365 its President or a Vice-President, such orders or assignments as may be necessary in order to enable the RAILWAY COMPANY to receive and collect any payments made for or on account of the interest of any other obligations deposited or pledged with said TRUST COMPANY hereunder as part of the security hereof, and so long as the RAILWAY COMPANY shall not be in default hereunder as aforesaid, and shall not have surrendered possession as aforesaid, the RAILWAY COMPANY shall have the right to vote upon all shares of stock pledged hereunder for any and all purposes not inconsistent with the provisions and purposes of this Indenture, and with the same force and effect as though such pledge had not been made but subject to the restrictions and agreements herein contained.

Principal or any sum paid on account of the principal of any bond pledged hereunder may be used by the Railway Company for any purposes mentioned in Article Second hereof.

SECTION 3. In case, while and so long as there shall be no default hereunder, any sum shall be paid on account of the principal of any bond or other obligations at any time held by the TRUST COMPANY subject to the lien of this Indenture, or in case any sum shall be paid on account of the interest on any such bonds or obligations out of the proceeds of the property covered by any mort-

gage or other indenture securing such bonds or obligations, or in case upon the dissolution or liquidation of any Company any sum shall be paid upon any shares of stock of such company pledged hereunder, or upon any obligations or claims subject to this Indenture, then in such case any such sum shall be collected and received by the TRUST COMPANY and shall by it be paid over to the RAILWAY COMPANY for any of the purposes for which bonds may be issued hereunder as provided in Article Second of this Indenture, and subject to all the terms and conditions stated in said Article.

Trustee to deliver for cancellation the obligations of any Company the title to all of whose property has been acquired by the Railway Company.

SECTION 4. In the event that the RAILWAY COMPANY shall at any time acquire title to all of the property of any company or companies, all of whose capital stock (less the number of shares necessary to qualify directors), mortgage bonds and other obligations are owned by it and are pledged and deposited with the TRUST COMPANY under this Indenture, the TRUST COMPANY shall, upon the written request of the President or a Vice-President of the RAILWAY COMPANY, and upon conveyance and assignment to the TRUSTEES hereunder of the property so acquired by the RAILWAY COMPANY, deliver such stock to the RAILWAY COMPANY and shall cause such bonds and other obligations to be cancelled and delivered to the Trustees of the mortgages or liens securing the same for the purpose of obtaining the discharge and satisfaction of such mortgages or liens, and the RAILWAY COMPANY covenants and agrees that in the event of the acquisition by it, through the use of the bonds secured hereby, as in this Indenture provided, of all of the Mortgage bonds, if any, and all of the shares of the outstanding capital stock (except the number of shares necessary to qualify directors) of any other company or companies, and the deposit of said bonds and stock with the TRUST COMPANY, it will as soon as practicable thereafter secure the title to all of the property of any such company or companies and cause all of said property to be subjected to the lien of this Indenture as a first and paramount lien thereon.

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Power of the Railway Company to preserve corporate existence of pledged Companies.

SECTION 5. The TRUST COMPANY upon the request of the RAILWAY COMPANY or, in its discretion without such request, may do whatever may be necessary for the purpose of maintaining or

preserving the corporate existence of any and all companies, all of whose bonds and outstanding stock (less the number of shares necessary to qualify directors) shall, at any time, be pledged hereunder, and for such purposes shall be entitled from time to time to sell, assign, transfer and deliver so many shares of the stock of such companies as may be necessary to qualify persons to act as directors of, or in any other official relation to, said companies; provided, however, that under this provision no transfer shall be made which
367 shall reduce the amount of stock in any such company held by the TRUST COMPANY so as to render it less than a two-thirds interest in said stock, and in every case the TRUST COMPANY may make such arrangements as it shall deem necessary for the protection of the trust hereunder.

Power to join in any reorganization.

SECTION 6. The TRUST COMPANY, with the consent of the RAILWAY COMPANY, at any time may take such steps as in its discretion shall be necessary to protect its interests hereunder in respect of any bonds, obligations or stock subject to the lien hereof, and for that purpose it may join in any plan of reorganization, readjustment or refunding in respect of any such bonds or stocks and may accept new securities issued in exchange therefor under such plan; but in case the RAILWAY COMPANY shall be in default in the performance of any covenant in this Indenture contained, the TRUST COMPANY shall be entitled to take such steps without the consent of the RAILWAY COMPANY.

Power to foreclose mortgages securing pledged bonds.

SECTION 7. In case default shall be made in the payment of the principal or interest of any of the bonds or obligations at any time subject to the lien of this Indenture, then in any such case, the TRUST COMPANY shall, upon the request of the RAILWAY COMPANY, cause proper proceedings to be instituted and prosecuted in some court of competent jurisdiction to foreclose or enforce the mortgage, or lien, by which such bonds or obligations in default are secured. In case the RAILWAY COMPANY shall be in default in the performance of any covenants in this Indenture contained, the TRUST COMPANY shall be entitled to take such steps without the request of the RAILWAY COMPANY.

Property may be purchased by the use of pledged securities.

In case, at any time, any company all of whose outstanding capital stock (less the number of shares necessary to qualify directors) shall be held by the TRUST COMPANY hereunder shall be dissolved or liquidated, or in case all or any of the

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property of any such company shall be sold upon the insolvency of such company at any judicial or other sale, or in case any property covered by a mortgage securing any bonds, or subject to any lien for the payment of any obligations held by the TRUST COMPANY hereunder, shall be sold upon foreclosure of such mortgage, or by enforcement of such lien, then in any such case, if the property of such company, or the property sold, can be acquired by crediting on the bonds, obligations, claims or stock held by the TRUST COMPANY hereunder any sum accruing or to be received thereon out of the proceeds of such property, and paying not more than fifteen per cent. of the price of such property in cash, said TRUST COMPANY in its discretion *may*, but if by the RAILWAY COMPANY requested in writing and provided with the amount of cash necessary therefor, said TRUST COMPANY in every case *shall* purchase, or cause to be purchased, or permit the RAILWAY COMPANY to purchase such property, in the name or on behalf of the TRUSTEES or of the RAILWAY COMPANY or by purchasing trustees, and shall use, or permit the RAILWAY COMPANY to use such bonds, obligations, claims and stock, as far as may be, to make payment for such property; and in case of such purchase said TRUST COMPANY shall take such steps as it may deem proper to cause such property to be vested either in the RAILWAY COMPANY, subject to the lien of this Indenture, or in some other corporation organized or to be organized for that purpose, of whose bonded debt and capital stock, all except the number of shares of stock required to qualify directors, shall be received and held by said TRUST COMPANY for the RAILWAY COMPANY, but subject to the lien of this Indenture.

Property to be subjected to this Indenture, either directly or by collateral pledge.

Expenses of Trustees assumed by the Railway Company.

The RAILWAY COMPANY covenants that, on demand of the TRUSTEES, or the TRUST COMPANY it, the RAILWAY COMPANY, forthwith will pay or satisfactorily provide for all expenditures incurred by the TRUSTEES or by the TRUST COMPANY under any of the provisions of this Section, including all

369 sums required to obtain and perfect the ownership and title to any property which the TRUSTEES or the TRUST COMPANY shall purchase or cause to be purchased pursuant to the provisions of this Section; and in case the RAILWAY COMPANY shall fail so to do, then, without impairment of, or prejudice to, any of its rights hereunder by reason of the default of the RAILWAY COMPANY, the TRUSTEES or the TRUST COMPANY, in their or its discretion, may advance all such expenses and other moneys required, or may procure such advances to be made by others, and for the repayment in six months thereafter, with interest, of such advances made by the TRUSTEES or the TRUST COMPANY, or by others at their or its request, the TRUSTEES or the TRUST COMPANY, as the case may be, shall have a lien prior to the lien of this Indenture, on all the bonds, obligations, shares and other property in respect of which such advances were made, and the proceeds thereof and any property acquired by means of such bonds, obligations or shares.

Proceeds may be paid out for purposes authorized by Article Second hereof.

In case the TRUSTEES or the TRUST COMPANY shall not purchase or cause to be purchased the property sold at any such sale, and shall not join in a plan of reorganization as aforesaid in respect of such bonds or stock, then the TRUST COMPANY shall receive any portion of the proceeds of the sale accruing on the bonds, obligations and stocks by it held hereunder, and such proceeds, from time to time, shall be paid over to the RAILWAY COMPANY for any of the purposes for which bonds may be issued hereunder as provided in Article Second of this Indenture and subject to all the terms and conditions stated in said Article.

Consolidation of Companies whose stocks are pledged.

SECTION 8. Anything in this Indenture contained to the contrary notwithstanding, any company all of whose outstanding capital stock (less the number of shares necessary to qualify directors) shall be subject to this Indenture may be merged or consolidated with, or all or any part of the property of any such company may be sold either to the RAILWAY COMPANY or to any other

370 railway company all of whose outstanding capital stock, except as aforesaid, shall then be held by the TRUST COMPANY hereunder; but no such

Conditions of consolidation or merger.

merger, consolidation or sale shall be made except upon condition *(first)* that in case of any merger or consolidation all of the stock of the consolidated company or the company (other than the RAILWAY COMPANY) into which any such company shall be merged (except as aforesaid) shall be received, or shall continue to be held, by the TRUST COMPANY under this Indenture; and *(second)* that in case of any such merger, consolidation or sale, neither of the companies which shall be parties thereto (other than the RAILWAY COMPANY) nor any consolidated or new company formed thereby, shall, in connection therewith, create or incur any indebtedness or any lien, charge or incumbrance upon its property unless such indebtedness, lien, charge or incumbrance shall be transferred to the TRUST COMPANY and become subject to this Indenture; and *(third)* that in case of a merger or consolidation with, or sale to, the RAILWAY COMPANY, this Indenture shall become a lien upon the railway and all property appertaining to the railway of the company merged or consolidated with, or whose property shall be sold to the RAILWAY COMPANY.

Under the conditions aforesaid, any such merger, consolidation or sale may be made under any laws to which such company may be subject, and, upon request of the RAILWAY COMPANY, the TRUSTEES shall consent to all acts proper to carry into effect the purposes of this section.

Article Fifth.

REMEDIES IN CASE OF DEFAULT.

SECTION 1. In case default shall be made in the payment of any interest on any bond hereby secured, or in the payment of the principal of any such bond, or in case default shall be made in the due observance or performance of any other
371 covenant or condition herein required to be kept or performed by the RAILWAY COMPANY, and any such last-mentioned default shall continue for a period of six months after written notice thereof to the RAILWAY COMPANY from the TRUSTEES or from the holders of twenty per cent. or more in amount of the bonds hereby secured and at the time outstanding, then and in each and every such

Power of Entry after default.

case the TRUSTEES, by their agents or attorneys, may forthwith enter into or upon all or any part of the railroads, rolling stock, property, lands, rights, interests, franchises and premises hereby conveyed, or intended so to be, or conveyed or intended to be conveyed by any indenture supplemental hereto, and each and every part thereof, and may exclude the RAILWAY COMPANY, its agents and servants wholly therefrom, and, having and holding the same, may use, operate, manage and control said railroads and other premises and property, regulate the tolls for the transportation of passengers and freight thereon, and conduct the business thereof, either personally or by their superintendents, managers, receivers, agents, servants or attorneys, to the best advantage of the holders of the bonds hereby secured; and upon every such entry the TRUSTEES may, at the expense of the trust estate, from time to time, either by purchase, repair or construction, maintain and restore, and may insure or keep insured, the rolling stock, tools, machinery and other property, buildings, bridges and structures erected or provided for use in connection with said railroads and other premises, and whereof they shall become possessed as aforesaid, in the same manner and to the same extent as is usual with railroad companies, and likewise may, from time to time, at the expense of the trust estate, make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments and improvements thereto and thereon as to them may seem judicious; and the TRUSTEES in such case shall have the right to manage the mortgaged premises and property and to carry on the business and to exercise all the rights and powers of said RAILWAY COMPANY, either in the name of said RAILWAY
372 COMPANY or otherwise, as the TRUSTEES shall deem best; and the TRUSTEES shall be entitled to collect and receive all tolls, earnings, incomes, rents, issues and profits of the mortgaged premises and property and every part thereof; and after deducting the expenses of operating said railroads and other premises and conducting the business thereof, and of repairs, maintenance, renewals, replacements, alterations, additions, betterments and improvements, and all payments

which may be made for taxes, assessments, insurance and prior or other proper charges upon the said railroads, premises or property or any part thereof, as well as just and reasonable compensation for their own services and for the service of all counsel, agents and employees by them properly engaged and employed, they shall apply the moneys arising as aforesaid as follows:

Application of income by Trustee in possession.

First. In case the principal of the bonds hereby secured shall not have become due, to the payment of the interest in default in the order of the maturity of the installments of such interest, with interest thereon, such payments to be made ratably to the persons entitled thereto without any discrimination or preference.

Second. In case the principal of the bonds hereby secured shall have become due, by declaration or otherwise, first, to the payment of the accrued interest (with interest on the overdue installments thereof) in the order of the maturity of the installments, and next, if any surplus remains towards the payment of the principal of all bonds hereby secured, such payments in every instance to be made ratably to the persons entitled thereto without any discrimination or preference.

Upon the payment in full of whatever may be due for principal or interest and be payable for other purposes, the premises shall be returned to the RAILWAY COMPANY.

Upon the happening of any of the defaults hereinbefore specified the TRUST COMPANY shall have all shares of stock then held by it hereunder transferred to its name as TRUSTEE hereunder, and during the continuance of such default shall be entitled to vote thereon, and, for the benefit of the holders of the bonds hereby secured, shall receive and collect all interest moneys and all dividends maturing and payable upon all bonds and stocks then held by the TRUST COMPANY and apply all moneys so received in the manner in this Section prescribed in respect of the tolls, earnings, income, rents, issues and profits of the mortgaged premises; and as holders of such bonds and shares of stock the TRUST COMPANY shall be entitled to perform any and all acts and to make or execute

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any and all transfers, requests, requisitions or other instruments for the purpose of carrying out the provisions of this Section; but in the event that a receiver of the mortgaged railway or property shall have been appointed and shall be in possession thereof the TRUST COMPANY from time to time in its discretion, *may*, and if requested by the holders of a majority in amount of the bonds hereby secured the TRUST COMPANY *shall*, turn over any part or all of the interest moneys and dividends so collected by it to such receiver and may co-operate with such receiver in managing and operating the railroad and property of the RAILWAY COMPANY, subject to the lien of this Indenture, in such manner as the TRUST COMPANY shall deem for the best interests of the holders of the bonds hereby secured.

In case at any time when the mortgaged premises are in the possession of the TRUSTEES, or of any Receiver, the income and profits received from the mortgaged premises, after deducting all expenses properly chargeable against the same, shall be insufficient to pay all the interest upon bonds secured hereby which was due when the TRUSTEES, or such Receiver, took possession of the mortgaged premises, and all interest which may fall due while the TRUSTEES, or such Receiver, are in possession thereof, the continuance of a default happening before the TRUSTEES or Receiver took possession of
374 the property, or the failure to pay interest maturing while the TRUSTEES, or such Receiver, are in possession of the property, shall entitle the TRUSTEES and the bondholders to the same rights and remedies as are herein or by law provided upon the continuance of such default or the failure to pay such interest, as the case may be, in all respects as if the RAILWAY COMPANY had continued in possession of said premises.

Rights and remedies of Trustees not affected by possession.

SECTION 2. In case default shall be made in the payment of any semi-annual installment of interest on any bond hereby secured when the same shall become payable, and any such installment shall remain unpaid for a period of six months, then the holders of a majority in amount of the bonds hereby secured then outstanding, may, by notice in writing delivered to the RAILWAY COMPANY, declare

Anticipation of maturity of the principal of the bonds.

the principal of all bonds hereby secured then outstanding to be due and payable immediately, and upon any such declaration the same shall become and be immediately due and payable, anything in this Indenture or in said bonds contained to the contrary notwithstanding. This provision, is, however, subject to the condition that, if at any time after the principal of said bonds shall have been so declared due and payable, and before any sale of the mortgaged premises or any part thereof shall have been had, all arrears of interest upon all bonds hereby secured then outstanding, with interest on overdue installments of interest, and all expenses properly incurred by the TRUSTEES or the TRUST COMPANY or by any receiver duly appointed of the mortgaged premises or any part thereof, and their own compensation, shall be paid by the RAILWAY COMPANY to the TRUSTEES, or in case such amounts shall have been collected out of the income of the mortgaged premises, before any sale of the mortgaged premises or any part thereof shall have been had, then and in every such case such declaration and its consequences shall *ipso facto* be rescinded and annulled; but no such rescission and annulment shall extend to or affect any subsequent default, or impair any right consequent thereon.

375 SECTION 3. In case default shall be made in the payment of any interest on any bond hereby secured and any such default shall continue for a period of six months, or in case default shall be made in the payment of the principal of any such bond, when the same shall become due and payable either by its terms or by declaration of the bondholders as aforesaid, or in case default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the RAILWAY COMPANY, and any such last-mentioned default shall continue for a period of six months after written notice thereof to the RAILWAY COMPANY from the TRUSTEES or from the holders of twenty per cent. or more in amount of the outstanding bonds hereby secured, then and in each and every such case, the TRUSTEES shall be forthwith entitled, with or without entry, personally or by attorney, in their discretion, to sell at pub-

Power of sale.

lic auction to the highest and best bidder all and singular the mortgaged railroads and premises,

rights and franchises, and all stocks, bonds, and other obligations and interests of every description held by the TRUST COMPANY or in any manner subject to this Indenture, and all right, title, interest, claim and demand therein, and right of redemption thereof, which sale shall be made in one lot and as an entirety or in separate parcels in accordance with Section 6 of this Article, and upon such terms as the TRUSTEES may fix, and upon any such sale the TRUSTEES shall execute and deliver a deed or deeds of transfer or release of the property sold or other writing evidencing such sale; *provided*, that this power of sale shall only be exercised so far as may be authorized by law.

SECTION 4. In case default shall be made in the payment of any interest on any bond hereby secured or in the payment of the principal of any such bond, when the same shall become due and payable either by its terms or by declaration of the bondholders as aforesaid, or in case default shall
376 be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the RAILWAY COMPANY and any such last-mentioned default shall continue for a period of six months after written notice thereof to the RAILWAY COMPANY from the TRUSTEES, or from the holders of twenty per cent. or more in amount of the outstanding bonds hereby secured, then and in each and every such case the TRUSTEES
Power to foreclose. may forthwith proceed to protect and enforce their rights and the rights of the bondholders under this Indenture by a suit or suits in equity or at law, either for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure of this Indenture for interest, or for principal, or both, or for the enforcement of any other appropriate legal or equitable remedy, as the TRUSTEES shall deem most effectual, in support of any of their rights or duties hereunder.

SECTION 5. Upon filing a bill in equity or upon other commencement of judicial proceedings, as provided in the foregoing section of this Article, by the TRUSTEES to enforce any right under this Indenture, the TRUSTEES shall be entitled

Entitled to appointment of a receiver.

to exercise any and all rights and powers herein conferred, and, as a matter of right, the TRUSTEES shall be entitled to the appointment of a receiver of the premises hereby mortgaged and of the tolls, earnings, revenues, rents, issues, profits and other income thereof, with such powers as the court making such appointment shall confer, and shall be entitled to the application by any such receiver of the net income for the benefit of the holders of the bonds issued hereunder, in accordance with the trusts herein declared. Except as herein expressly provided to the contrary, no remedy in this Indenture conferred upon or reserved to the TRUSTEES is intended to be exclusive of any other remedy, but every remedy in this Indenture provided shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute; and every power and remedy given by this Indenture to the TRUSTEES or to the TRUST COMPANY or to the bondholders may be exercised from time to time and as often as may be deemed expedient. No delay or omission of the TRUSTEES or of the TRUST COMPANY, or of any holder of bonds hereby secured, to exercise any right or power arising from any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein. In case the TRUSTEES shall have proceeded to enforce any right under this Indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued and abandoned because of a waiver or for any other reason, or shall have been determined adversely to the TRUSTEES, then and in every such case, the RAILWAY COMPANY and the TRUSTEES shall severally and respectively be restored to their former position and rights hereunder in respect of the mortgaged premises, and all rights, remedies and powers of the TRUSTEES shall continue as though no such proceedings had been taken.

Remedies cumulative.

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Property to be sold as an entirety unless otherwise directed or necessary.

SECTION 6. In the event of any sale under or by virtue of the power of sale herein contained, or by virtue of judicial proceedings, or of any judgment or decree of foreclosure and sale, the whole of the property and premises hereby conveyed, mortgaged, assigned, or pledged, including all stocks,

bonds and other obligations and interests of every description held by the TRUST COMPANY or in any way subject to this Indenture shall be sold in one parcel and as an entirety, unless the TRUSTEES shall elect to sell in several parcels; but if the holders of a majority in amount of the bonds hereby secured then outstanding shall in writing request the TRUSTEES to cause said premises to be sold either in one parcel as an entirety or in several parcels, the sale shall be made in one parcel as an entirety or in several parcels as may be specified in such request, and at such time or times and place or places as
378 may be designated therein so far as the law may allow; but any sale of the mortgaged railroads, franchises and property appurtenant thereto or appertaining to the use thereof shall be made at the City of St. Louis, in the State of Missouri, or such place
Notice of sale. upon the mortgaged railroads as the TRUSTEES may fix. The personal property and chattels appertaining to the railroads herein conveyed and transferred, or intended so to be, now held or hereafter acquired, shall be deemed real estate for all the purposes of this Indenture, and shall be held and taken to be fixtures and appurtenances of the said railroads, and are to be used and sold therewith and in the same manner and not separate therefrom, except as herein otherwise provided.

Notice of any such sale shall state the time and place when and where the same is to be made, and shall contain a brief general description of the property to be sold, and shall be published once in each week for at least four successive weeks prior to such sale in a newspaper published in St. Louis, Missouri, and a newspaper published in New York City, New York. The TRUSTEES may adjourn or cause to be adjourned any such sale from time to time by announcement at the time and place appointed for such sale or for such adjourned sale or sales, and without further notice or publication such sale may be made at the time and place to which the same shall be so adjourned.

Principal of bonds to become due upon sale.

SECTION 7. In case of such sale of the mortgaged railroads and property, whether under the power of sale hereby granted or pursuant to judicial proceedings, the whole of the principal sum of the bonds hereby secured, if not previously due,

shall at once become due and payable, anything in said bonds or in this Indenture to the contrary notwithstanding.

Stay, appraisement or extension laws waived.

SECTION 8. The RAILWAY COMPANY covenants and agrees that it will not at any time insist upon or plead or in any manner whatever claim or take the benefit or advantage of any stay or extension law now or at any time hereafter in force, nor will it claim, take or insist upon any benefit or advantages from any law now or hereafter in force, providing for the valuation or appraisement of the mortgaged premises prior to any sale or sales thereof; nor will it after any such sale or sales claim or exercise any right under any statute to redeem the property so sold or any part thereof; and it hereby expressly waives all benefit and advantage of any such law or laws, and covenants that it will not hinder, delay or impede the execution of any power herein granted and delegated to the TRUSTEES, but that it will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

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Conveyance to purchaser of mortgaged premises.

SECTION 9. Upon the completion of any sale or sales the TRUSTEES shall execute and deliver to the accepted purchaser or purchasers a deed or deeds of transfer and release of the property and franchises sold, or shall execute and deliver in conjunction with the deed or deeds of the court officer conducting such sale a proper release of such property and franchises, and the TRUST COMPANY shall deliver to such purchaser or purchasers all bonds, obligations and the certificates for all shares of stock held by the TRUST COMPANY and sold to such purchaser or purchasers together with proper assignments and transfers of such bonds, obligations and shares. The TRUSTEES and their successor and successors are hereby appointed the true and lawful attorney or attorneys irrevocable of the RAILWAY COMPANY, in its name and stead, to make all necessary deeds of conveyance, sale and transfer of the property herein conveyed and mortgaged, and for that purpose may execute all necessary acts of conveyance, assignment and transfer, and may substitute one or more persons with like power, the RAILWAY COMPANY hereby ratifying and confirming all that its said attorney or attorneys,

or such substitute or substitutes, shall lawfully do
380 by virtue hereof. Any such sale or sales made under or by virtue of this Indenture, either under the power of sale hereby granted and conferred, or under or by virtue of judicial proceedings, shall divest all right, title, interest, estate, claim and demand whatsoever, either at law or in equity, of the RAILWAY COMPANY, of, in and to the premises sold, and shall be a perpetual bar both at law and in equity against said RAILWAY COMPANY, its successors and assigns, and against any and all persons claiming or to claim the premises sold, or any part thereof, from, through or under the RAILWAY COMPANY, its successors or assigns. Nevertheless, the RAILWAY COMPANY shall, if so requested by the TRUSTEES, ratify and confirm such sale by executing and delivering to the TRUSTEES or to such purchaser or purchasers all proper deeds, conveyances and releases as may be designated in such request.

Receipt of Trustees to discharge purchaser.

The receipt of the TRUSTEES or of the TRUST COMPANY or of the court officer conducting any such sale shall be a sufficient discharge for the purchase money to any purchaser of the property, or any part thereof, sold as aforesaid, and no such purchaser, or his representatives, grantees or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this Indenture, or be answerable in any manner whatsoever for any loss, misapplication, or non-application of any such purchase money or any part thereof.

Application of purchase and other money.

SECTION 10. The purchase money, proceeds or avails of any sale of the mortgaged premises, together with any other sums which may then be held by the TRUSTEES or by the TRUST COMPANY, or be payable to them or it under any of the provisions of this Indenture as part of the trust estate, shall be applied as follows:

Payment of costs, expenses, compensation, &c., of Trustees

First. To the payment of the costs, expenses, fees and other charges of said sale, and a reasonable compensation to the TRUSTEES, their agents and attorneys, and to the payment of all expenses,
381 liabilities and advances incurred, or disbursements

made by the TRUSTEES, or either of them, and to the payment of all taxes, assessments or liens prior to the lien of these presents, except any taxes, assessments or other superior liens subject to which such sale shall have been made.

Payment of amount due on bonds with interest.

Second. To the payment of the whole amount due, owing or unpaid upon the bonds hereby secured for principal and interest, with interest on the overdue installments of interest, and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the said bonds, then to the payment of such principal and interest without preference or priority of principal over interest or of interest over principal or of any installment of interest over any other installment of interest, ratably, according to the aggregate of such principal and the accrued and unpaid interest.

Surplus to Railway Company.

Third. Any surplus then remaining, to the RAILWAY COMPANY, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

Purchasers may use bonds in payment.

SECTION 11. In case of sale of the mortgaged premises or any part thereof, the purchaser, in settlement or payment for the property purchased, shall be entitled to use and apply towards payment of the purchase price of the property purchased any bonds and any matured and unpaid coupons hereby secured, by presenting such bonds and coupons so that there may be credited and endorsed or stamped as paid thereon the sums applicable to such payment out of the net proceeds of such sale as provided in Section 10 of this Article; and such purchaser shall thereupon be credited on account of the purchase price payable by him with the sums so applicable and credited on the bonds and coupons so presented. Such bonds and coupons so presented by the purchaser shall be deemed to be paid only to the extent of the amounts so credited as paid thereon; Provided, however, that no coupons, the payment of which shall have been extended, shall be accepted on account of payment of purchase money for said property.

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At any such sale the TRUSTEES or the TRUST COMPANY, or any bondholders or their agents, may bid for and purchase such property and may make

payment therefor as aforesaid, and, upon compliance with the terms of sale, may hold, retain and dispose of such property without further accountability.

Respective rights of 25% and a majority of the bondholders, in case of default.

SECTION 12. Upon the written request of the holders of twenty-five per cent. in amount of the bonds hereby secured then outstanding, in case of any default as aforesaid, it shall be the duty of the TRUSTEES, upon being indemnified as hereinafter provided, to take all needful steps for the protection and enforcement of their rights and the rights of the holders of the bonds hereby secured, or to exercise the powers of entry and sale herein conferred, or to commence appropriate judicial proceedings by action, suit or otherwise, as the TRUSTEES shall deem most expedient in the interest of the holders of the bonds hereby secured; but, anything in this Indenture contained to the contrary notwithstanding, the holders of a majority in amount of the bonds hereby secured and outstanding, shall have the right from time to time, if they so elect and manifest such election by an instrument in writing executed and delivered to the TRUSTEES, to direct and control the method and place of conducting any and all proceedings for any sale of the premises hereby conveyed and mortgaged, or for the foreclosure of this Indenture, or for the appointment of a receiver, or any other action or proceeding hereunder. However, nothing herein contained shall be construed as requiring any direction or action on the part of bondholders to enable the TRUSTEES to act in their discretion in any case where such action by bondholders in not herein expressly required.

Trustees may recover judgment for the benefit of the bondholders.

SECTION 13. In case default shall be made in the payment of any interest on any bond hereby secured, or in case default shall be made in the payment of the principal of any such bond when the same shall become payable, whether at the maturity of said bond, or by declaration as authorized by this Indenture, or by a sale of the mortgaged premises as hereinbefore provided, then, upon demand of the TRUSTEES, the RAILWAY COMPANY agrees and covenants that it will pay to the TRUS-

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TEES, for the benefit of the holders of the bonds and coupons hereby secured then outstanding, the whole amount which shall then be due and payable on all such bonds and coupons for principal or interest, or both, as the case may be, with interest upon the overdue principal and installments of interest; and, in case the RAILWAY COMPANY shall fail to pay the same forthwith upon such demand, the TRUSTEES, in their own names and as trustees of an express trust, shall be entitled to recover judgment for the whole amount so due and unpaid. The TRUSTEES shall be entitled to recover judgment as aforesaid before or after or during the pendency of any proceeding for the enforcement of the lien of this Indenture upon the mortgaged premises, and the right of the TRUSTEES to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Indenture, or by the foreclosure of the lien thereof; and in case of a sale of the mortgaged premises and of the application of the proceeds of sale to the payment of the mortgage debt, the TRUSTEES, in their own names and as trustees of an express trust, shall be entitled to receive and to enforce payment of any and all deficiency or amounts then remaining due and unpaid upon any and all of the bonds issued hereunder and then outstanding for the benefit of the holders thereof, and shall be entitled to recover judgment for any portion of the mortgage debt remaining unpaid, with interest. No recovery of any judgment by the TRUSTEES and no levy of any execution under any such judgment upon property subject to the lien of this Indenture, or upon any other property, shall in any manner, or to any extent, affect or impair the lien of the TRUSTEES upon the mortgaged property or any part
384 thereof, or any rights, powers, or remedies of the TRUSTEES hereunder, or any rights, powers, or remedies of the holders of the bonds hereby secured, but such lien, rights, powers and remedies shall continue unaffected and unimpaired as before. Any moneys thus recovered or collected by the TRUSTEES under this Article, less the cost and expenses of collection and the reasonable compensation of the TRUSTEES, shall be applied by the TRUSTEES towards payment to the holders

of such bonds and coupons of the amounts due and unpaid upon such bonds and coupons respectively, such payment in every instance to be made ratably and without any preference or priority upon presentation of the respective bonds and coupons and endorsement of such payment thereon, if partly paid, or upon cancellation thereof, if paid in full.

The Railway Company may voluntarily surrender to the Trustees the mortgaged premises.

SECTION 14. The RAILWAY COMPANY, at any time before full payment of the bonds secured hereby and whenever it shall deem it expedient for the better protection and security of such bonds, although there be then no default entitling the TRUSTEES to enter into possession, may, with the consent of the TRUSTEES, surrender and deliver to the TRUSTEES full possession of the whole or any part of the property, premises and interests hereby conveyed, or intended so to be, for any period fixed or indefinite. Upon such surrender and delivery to the TRUSTEES, with their consent, the TRUSTEES shall enter into and upon the premises so surrendered and delivered, and shall take and receive possession thereof, for such period fixed or indefinite, as aforesaid, without prejudice, however, to their right at any time subsequently, when entitled thereto by any provision hereof, to insist upon and to maintain such possession, though beyond the expiration of any prescribed period. Upon any such voluntary surrender and delivery of said property and premises, or any part thereof, the TRUSTEES, from the time of their entry,
385 shall work, maintain, use, manage, control and employ the same in accordance with the provisions of this Indenture, and shall receive and apply the income and revenues thereof as provided in Section 1 of this Article.

Article Sixth.

POWER TO RELEASE.

The Trustees may upon request of the Railway Company release certain property subject to the lien of this Indenture.

Upon the written request of the RAILWAY COMPANY, evidenced by resolution of its Board of Directors or Executive Committee, the TRUSTEES shall, from time to time release from the lien and operation of this Indenture any part of the real estate and other property hereby conveyed and mortgaged (but nothing in this Article contained shall be construed as authorizing any re-

lease of any bonds, or other obligations or shares of stock pledged hereunder); *provided*, that no part of the lines of track or of the rights of way shall be released unless the same shall no longer be of use in the operation of the mortgaged railroads, and that no part of such lines of track or rights of way shall be so released if thereby the continuity of the railroads hereby mortgaged shall be broken; and *provided further*, that no part of the mortgaged premises or property shall be released hereunder unless at the time of such release it shall no longer be necessary or expedient to retain the same for the operation, maintenance or use of the remaining railroads and property or for use in conducting the business thereof, and no such release shall be made unless the RAILWAY COMPANY shall have contracted to sell the property so to be released, or shall have contracted to exchange the same for other property.

Proceeds of sale of mortgaged property may be used for any purpose authorized by Article Second hereof.

The proceeds of any and all such sales and all moneys received as compensation for any property subject to this Indenture taken by exercise of the power of eminent domain or otherwise shall be paid to the TRUST COMPANY to be by it paid over to the RAILWAY COMPANY for any of the purposes for which bonds may be issued hereunder as provided in Article Second of this Indenture. Any new property acquired by the RAILWAY COMPANY by exchange or purchase, to take the place of any property released hereunder shall forthwith become subject to the lien of this Indenture as fully as if specifically mortgaged hereby and without further conveyance; but, if requested by the TRUSTEES, the RAILWAY COMPANY shall convey the same to the TRUSTEES by appropriate deeds or other instruments upon the trusts and for the purposes of this Indenture.

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Changes in leases and trackage rights.

The RAILWAY COMPANY, from time to time, may make changes or alterations in or substitutions of any and all leases, trackage rights or contracts; but in such event any modified, altered or substituted leases, trackage rights or contracts shall forthwith become bound by and be subject to the terms of this Indenture to the same extent and in the same manner as those previously existing.

The RAILWAY COMPANY, while in possession of the mortgaged premises, shall also have full power, from time to time, in its discretion, to dispose of any of the rails, equipment, machinery, tools, implements, materials and supplies at any time held subject to the lien hereof, which may have become unsuitable or unnecessary for such use, replacing the same by new rails, equipment, machinery, tools, implements, materials or supplies, which shall thereby immediately become subject to the lien of this Indenture.

In case the mortgaged premises shall be in the possession of a receiver lawfully appointed, the powers in and by this ARTICLE conferred upon the RAILWAY COMPANY may be exercised by such receiver; and if the TRUSTEES shall be in possession of the mortgaged premises under any provision of this Indenture, then all the powers by this ARTICLE conferred upon the RAILWAY COMPANY may be exercised by the TRUSTEES in their discretion.

A certificate signed by the President or a Vice-President of the RAILWAY COMPANY shall be received by the TRUSTEES as conclusive evidence of any of the facts mentioned in this Article, and shall be full warrant and protection to the TRUSTEES for their action on the faith thereof.

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Article Seventh.

PROTECTION OF TRUSTEES.

Trustees not obliged to act unless indemnified against expenses.

The TRUSTEES shall not be under any obligation to take any action towards the execution or enforcement of the trusts hereby created which, in their opinion will be likely to involve them in expense or liability, unless one or more of the holders of the bonds hereby secured shall, as often as required by the TRUSTEES, furnish them reasonable security and indemnity against such expense or liability; nor shall the TRUSTEES be required to take notice of any default hereunder unless notified in writing of such default by the holders of at least twenty per cent. in amount of the bonds hereby secured then outstanding, or to take any action in respect of any default unless requested to take action in

respect thereof by a writing signed by the holders of not less than twenty-five per cent. in amount of the bonds hereby secured then outstanding, nor unless tendered reasonable security and indemnity aforesaid, anything herein contained to the contrary notwithstanding; but the foregoing provisions of this Section are intended only for the protection of the TRUSTEES and shall not be construed to limit or affect any discretion or power by any provision of this Indenture given to the TRUSTEES to determine whether or not they shall take action in respect of such default, or any power or discretion of the TRUSTEES to take action in respect of any default without such notice or request from bondholders.

May require additional evidence.

In any case where it shall be provided in this Indenture that the TRUSTEES or the TRUST COMPANY may accept a certificate from the RAILWAY COMPANY or any of its officers, or the resolution of the Board of Directors or Executive Committee of the RAILWAY COMPANY as sufficient evidence of any fact upon which the TRUSTEES or the TRUST COMPANY shall be required or permitted to take or refrain from taking action, the TRUSTEES or the TRUST COMPANY shall not be bound absolutely by such certificate or resolution, but may, in their or its discretion and at their or its option, make any independent investigation into the truth or accuracy of any such fact; and in case they or it shall after such independent investigation be satisfied that the said certificate or resolution or any fact contained therein is inaccurate, the TRUSTEES or the TRUST COMPANY may, in their discretion, take or refuse to take or refrain from taking action predicated upon such fact. Nothing in this section contained shall, however, take from the TRUSTEES the absolute protection herein conferred upon them in case they shall accept, without further investigation, the conclusiveness of any such certificate or resolution.

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Compensation of Trustees.

The TRUSTEES respectively shall be entitled to reasonable compensation for all services rendered by them in the execution of the trusts hereby created, which compensation, as well as all their reasonable expenses necessarily incurred and actually disbursed hereunder, the RAILWAY COMPANY

To be paid by the railway Company.

agrees to pay, and the TRUST COMPANY shall have a lien, prior to the lien of this Indenture upon the property hereby mortgaged, for the payment of its compensation and reasonable expenses incurred hereunder. The TRUSTEES shall not be answerable for the default or misconduct of any agent, attorney or employee appointed by them in pursuance hereof, if such agent, attorney, or employee shall have been selected with reasonable care, nor shall either TRUSTEE be liable for the acts or defaults of the other, nor for anything whatever in connection with this trust, except each for its or his wilful misconduct or gross negligence. The TRUSTEES shall not be responsible for the filing or recording of this Indenture, but the RAILWAY COMPANY covenants that it will with all convenient speed cause the same to be recorded. The TRUSTEES shall not be personally liable for any debts contracted by them, or for damages to persons or property carried or injured, or for salaries or nonfulfillment of contracts during any period wherein the TRUSTEES shall manage the trust property or premises upon entry as aforesaid.

Trustee not liable for faults of Agents.

Covenant by Railway Company to record

Trustees not personally liable for debts, damages, etc.

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Article Eighth.

RIGHT OF ACTION BY BONDHOLDERS.

No holder of any bond or coupon hereby secured shall have any right to institute any suit, action or proceeding at law or in equity upon or in respect of this Indenture, or for the execution of any trust or power thereof, or for the appointment of a receiver, or for any other remedy under or upon this Indenture, unless such holder shall previously have given to the TRUSTEES written notice of any existing default and of the continuance thereof as hereinbefore provided; nor unless also the holders of twenty-five per cent. in amount of the bonds hereby secured then outstanding shall have made written request upon the TRUSTEES and shall have afforded to them reasonable opportunity themselves to proceed to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in their own name; nor unless, also, such holder or holders shall have offered to the TRUSTEES reasonable security and in-

demnity against the costs, expenses and liabilities to be incurred therein or thereby; and such notification, request, and offer of indemnity are hereby declared, in every such case, at the option of the TRUSTEES, to be conditions precedent to any action or cause of action for foreclosure or for the appointment of a receiver, and to the institution of any such suit, action or proceeding and to any other remedy hereunder; it being understood and intended that no one or more holders of bonds or coupons shall have any right in any manner whatever to affect, disturb or prejudice the lien of this Indenture by his or their action, or to enforce any right hereunder, except in the manner herein provided, and that all proceedings hereunder at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all holders of such outstanding bonds and coupons.

Article Ninth.

RESIGNATION OR REMOVAL OF TRUSTEES.

The TRUSTEES, or either of them, or any trustee hereafter appointed, may resign and be discharged from the trusts created by this Indenture, by delivering to the RAILWAY COMPANY written notice thereof addressed to the bondholders and the RAILWAY COMPANY and by publishing such notice at least twice a week for four successive weeks in one newspaper published in St. Louis, Missouri, and one newspaper published in New York City, New York, and by due execution of the instruments herein required. The TRUSTEES or either of them may be removed at any time by an instrument in writing under the hands of the holders of a majority in amount of the bonds hereby secured and then outstanding; but no such removal shall be made before default hereunder without the written consent of the RAILWAY COMPANY.

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Must publish written notice of resignation.

Provisions for removal of Trustees.

Any trustee hereunder other than The Mercantile Trust Company, or the TRUST COMPANY for the time being its successor hereunder, may be removed at any time by an instrument in writing executed by the RAILWAY COMPANY and by said The Mercantile Trust Company, or its successor; and in case of the removal, resignation, death or

incapacity of any such trustee the RAILWAY COMPANY and said The Mercantile Trust Company, or such successor TRUST COMPANY, at any time by an instrument in writing, executed by them jointly, may appoint a successor to any such other trustee.

Appointment of new Trustee.

In case at any time The Mercantile Trust Company shall resign or be removed or otherwise become incapable of acting, a successor TRUST COMPANY, qualified as hereinafter stated, may be appointed by the holders of a majority in amount of the bonds hereby secured then outstanding by an instrument or concurrent instruments or counterparts, signed by such bondholders or their agents duly authorized; *provided*, nevertheless, and it is hereby agreed and declared that, in case at any time neither the present TRUST COMPANY nor any successor TRUST COMPANY shall be in office hereunder, the RAILWAY COMPANY may, by an instrument executed by order of its Board of Directors, appoint a Trust Company (which shall be qualified as hereafter stated) to fill such vacancy until a new Trust Company shall be appointed by the bondholders. The RAILWAY COMPANY thereupon shall publish notice of such appointment at least once a week for four successive weeks in a newspaper published in St. Louis, Missouri, and a newspaper published in New York City, New York; and any new Trust Company so appointed shall immediately and without further act be superseded by a Trust Company appointed, in the manner above provided, by the holders of a majority in amount of the bonds hereby secured, if so appointed within one year after the first publication of such last-mentioned notice.

Railway Company may make appointment *pro tem.*

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Every TRUSTEE appointed hereunder, as successor to The Mercantile Trust Company, shall always be a trust company in good standing doing business in the City of New York, or elsewhere, if there be such a trust company willing, able and qualified to accept the trust upon reasonable or customary terms, and all the rights, powers and duties by this Indenture vested in the TRUST COMPANY shall be vested in such successor TRUST COMPANY, and every provision of this Indenture applicable to The Mercantile Trust Company shall apply equally to such successor Trust Company.

Qualifications of Trust Company.

Instrument to be executed by incoming and retiring Trustee.

Any new trustee appointed hereunder shall execute, acknowledge and deliver to his or its co-trustee and also to the RAILWAY COMPANY an instrument in writing accepting such appointment hereunder, and thereupon such new trustee, without any further act, deed or conveyance, shall become vested with all the estates, properties, rights, powers and trusts of his or its predecessor in the trust hereunder with like effect as if originally named as trustee herein; but the trustee ceasing to act shall, nevertheless, on the written demand of the new trustee, execute and deliver an instrument conveying and transferring to such new trustee upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the trustee so resigning or removed, and shall duly assign, transfer and deliver all property and moneys held by such trustee to the new trustee so appointed in its place; and, upon request of any
392 such new TRUSTEE, the RAILWAY COMPANY shall make, execute, acknowledge and deliver any and all deeds, conveyances, or instruments in writing necessary for more fully and certainly vesting in and confirming to such new trustee all such estates, properties, rights, powers, trusts and duties.

Article Tenth.

RIGHT OF RAILWAY COMPANY TO POSSESSION.

Right of possession until default.

Until some default shall have been made in the due and punctual payment of the interest or of the principal of the bonds hereby secured, or of some part of such interest or principal, or in the due and punctual performance and observance of some covenant or condition hereof obligatory upon the RAILWAY COMPANY, and such default shall have continued beyond the period of grace, if any, herein provided in respect thereof, the RAILWAY COMPANY, its successors and assigns shall be suffered and permitted to retain actual possession of the railroads, premises and property hereby mortgaged, and to manage, operate and use the same and every part thereof, with the rights and franchises appertaining thereto, and to collect, receive and take the tolls, earnings, rents, issues, profits and other income thereof; but the RAILWAY COMPANY hereby covenants and agrees to first pay from such income, after paying the operating ex-

Covenant to pay interest of bonds from income.

penses of said railroads and the taxes thereon, the interest accruing and maturing upon the bonds issued hereunder; and such income, after paying the operating expenses of said railroads, shall, either before or after default, and whether said railroads are operated by the RAILWAY COMPANY, or by the TRUSTEES under the power of entry hereinbefore reserved, or by a receiver or receivers appointed by any court at the instance of the RAILWAY COMPANY or of any creditor, stockholder or other person interested in said Company or having the right to apply for such appointment, be primarily pledged and applied to the payment of the interest and principal of said bonds in the order of priority declared in Section 1 of ARTICLE FIFTH hereof.

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Article Eleventh.

DISCHARGE OF MORTGAGE.

Payment of principal and interest of bonds, as herein provided to discharge this Indenture.

If, when the bonds hereby secured shall have become due and payable, the RAILWAY COMPANY shall well and truly pay or cause to be paid the whole amount of the principal moneys and interest due upon all of the bonds hereby secured and outstanding, or shall provide for such payment by depositing with the TRUST COMPANY hereunder, for the payment of such bonds, the entire amount due and to become due thereon for principal and interest, or shall, at any time, deliver or cause to be delivered to the TRUST COMPANY for cancellation and destruction all of the bonds issued hereunder, together with all unmatured coupons thereunto belonging; and shall also pay or cause to be paid all other sums payable hereunder, and shall well and truly keep, perform and observe all the things herein required to be kept, performed and observed by it according to the true intent and meaning of this Indenture, then and in that case all property, rights and interests hereby conveyed shall revert to the RAILWAY COMPANY, or to whomsoever may be entitled thereto, and the estate, right, title and interest of the Trustees therein shall thereupon cease, determine and become void; and the TRUSTEES shall, in such case, on demand of the RAILWAY COMPANY, and at its cost and expense, enter satisfaction and discharge of this Indenture upon the public records.

Article Twelfth.

Authenticity of Instruments Executed by Bondholders.

Any request or other instrument required by this Indenture to be signed or executed by bondholders may be in any number of documents of similar tenor, and may be signed or executed by such bondholders in person, or by agent or attorney appointed in writing. Proof of the execution of such a request or other instrument, or of a writing appointing any such agent or attorney, and of the holding by any person of coupon bonds transferable by delivery, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustees or either of them with re-
394 gard to any action taken by them under such request or other instrument, if made in the following manner, viz.: (1) The fact and date of the execution by any person of any such request, or other instrument, or writing may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in any State within the United States, certifying that the person signing such request or other instrument acknowledged to him the execution thereof, or by the affidavit of a witness to such execution duly sworn to before any such notary public or other officer. (2) The amount of coupon bonds transferable by delivery held by any person executing any such request or other instrument as a bondholder, and the amounts and issue numbers of the bonds held by such person and the date of his holding the same, may be proved by a certificate executed by any trust company, bank or other depositary (wherever situated) whose certificate shall be deemed by the Trust Company to be satisfactory, showing that such person had on deposit with such depositary or exhibited to it the bonds described in such certificate at the date therein mentioned. (3) The ownership of registered bonds shall be proved by the books for the registry of such bonds provided for under Section 6 of Article Third hereof.

Article Thirteenth.

Status of Bondholders.

Ownership of coupon bonds.

The Railway Company and the Trustees may deem and treat the bearer of any coupon bond

hereby secured, which shall not at the time be registered as hereinbefore authorized, and the bearer of any coupon for interest on any such bond, whether such bond shall be registered or not, as the absolute owner of such bond or coupon, as the case may be, for the purpose of receiving payment thereof and for all other purposes; and neither the RAILWAY COMPANY nor the TRUSTEES shall be affected by any notice to the contrary.

Ownership of registered bonds.

The RAILWAY COMPANY and the TRUSTEES may deem and treat the person in whose name any registered bond without coupons, issued hereunder, shall be registered upon the books of the RAILWAY COMPANY as hereinbefore provided, as the absolute owner of such bond for the purpose of receiving payment of, or on account of, the principal and interest of such bond, and for all other purposes, and may deem and treat the person in whose name any coupon bond shall be so registered as the absolute owner thereof for the purpose of receiving payment of, or on account of the principal thereof, and for all other purposes except to receive payments of interest represented by outstanding coupons; and all such payments so made to such registered holder, for the time being, or upon his order, shall be valid and effectual to satisfy and discharge the liability upon such bond to the extent of the sum or sums so paid.

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Article Fourteenth.

NON-LIABILITY OF STOCKHOLDERS, OFFICERS AND DIRECTORS.

Bondholders have no recourse against stockholders, officers or Directors.

No recourse under any obligation, covenant or agreement of this Indenture, or of any bond or coupon hereby secured, shall be had against any incorporator, stockholder, officer or director of the RAILWAY COMPANY, or of any successor corporation, either directly or through the RAILWAY COMPANY, by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any statute or otherwise, it being expressly agreed and understood that this mortgage and the obligations hereby secured are solely corporate obligations, and that no personal liability whatever shall attach to, or be incurred by, the stockholders, officers or directors of the RAILWAY COMPANY, or of

any successor corporation, or any of them, under or by reason of any of the obligations, covenants or agreements contained in this Indenture, or in any of the bonds or coupons hereby secured, or implied therefrom, and that any and all personal liability, either at common law or in equity, or by statute, of every such stockholder, officer or director, is hereby expressly waived as a condition of, and consideration for, the execution and issue of this mortgage and such bonds and coupons.

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Article Fifteenth.

Trustees' Acceptance of Trusts.

Acceptance.

The parties hereto of the second part, hereby accept the trusts in this Indenture declared and provided, and agree to perform the same upon the terms and conditions hereinbefore set forth. Except when otherwise indicated, the words "the Trustees," or "said Trustees," or any other equivalent term, as used in this Indenture, shall be held and construed to mean the Trustees for the time being, and the words "bond," "bondholder" and "holder" shall include the plural as well as the singular number.

Definition of terms herein employed.

Except when otherwise indicated the term "Trust Company," as used in this Indenture, shall be held to mean The Mercantile Trust Company, or any trust company which, for the time being, shall be a trustee hereunder in succession to said The Mercantile Trust Company.

Successors and assigns of the Railway Company bound.

All the covenants, agreements, stipulations and provisions in this Indenture contained, by or relating to the Railway Company, shall bind and relate to its successors and assigns, whether so expressed or not; and every successor corporation which shall be lawfully vested with the ownership of the properties subject to this Indenture shall possess and may exercise each and every right and power hereunder of the Railway Company.

Execution in counterpart.

In order to facilitate the recording of this Indenture, the same may be simultaneously executed in twenty-five counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

In Witness Whereof, the party hereto of the first part and the said THE MERCANTILE TRUST COMPANY, one of the parties hereto of the second part, have duly caused these presents to be signed in their corporate names, respectively, by their respective Presidents or Vice-Presidents and their respective corporate seals to be hereto affixed, attested by their Secretaries or Assistant Secretaries, and said William K. Bixby, one of the parties hereto of the second part, has hereunto set his hand and seal as of the day and year first above written.

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ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY,
By GEORGE J. GOULD,
President.

Seal of Railway Co.

Attest:
A. H. CALEF, Secretary.

THE MERCANTILE TRUST COMPANY,
By ALVIN W. KRECH,
Vice-President.

Seal of Trust Co.

Attest:
J. D. OSTRANDER, Asst. Secretary.

WILLIAM K. BIXBY.

Signed, sealed and delivered on behalf of the St. Louis, Iron Mountain and Southern Railway Company in the presence of

ALEX G. COCHRAN.
LAWRENCE GREER.
CHAS. EDGAR MILLS,
Commissioner for Louisiana in New York.

Signed and sealed on behalf of The Mercantile Trust Company in the presence of

I. MICHAELS.
E. B. CLARK.
CHAS. EDGAR MILLS,
Commissioner for Louisiana in New York.

Signed and sealed by William K. Bixby, in the presence of

ALEX G. COCHRAN.
LAWRENCE GREER.
CHAS. EDGAR MILLS,
Commissioner for Louisiana in New York.

Seal of
Chas. Edgar Mills.

STATE OF NEW YORK,
398 County of New York—ss:

I, CHAS. EDGAR MILLS, residing in the County and State of New York aforesaid, a Commissioner of Deeds in the State of New York for the States of Illinois, Missouri, Arkansas and Louisiana, respectively, duly appointed and qualified and commissioned by the Governors of said States, respectively, and a Notary Public in and for the City and County of New York, duly appointed, qualified and commissioned, do hereby certify that on the first day of May, 1903, before me personally appeared George J. Gould, the President, and A. H. Calef, the Secretary of St. Louis, Iron Mountain and Southern Railway Company, party of the first part and grantor in the foregoing instrument or mortgage deed, with whom I am personally acquainted and who are personally known to me, and known to me to be such President and Secretary respectively, and personally known to me to be the same persons whose names are signed to the foregoing instrument or mortgage deed as such President and Secretary respectively, and they, for themselves and on behalf of said St. Louis, Iron Mountain and Southern Railway Company, on this day severally acknowledged to me that said St. Louis, Iron Mountain and Southern Railway Company had executed the foregoing instrument or mortgage deed, and that they had executed the same as their own free and voluntary act and deed, and as the free and voluntary act and deed of the said company for the consideration and purposes therein mentioned and set forth.

And the said George J. Gould and A. H. Calef being by me severally duly sworn, did severally depose and say that he, said George J. Gould, is, and at the time of the execution of the foregoing instrument was, the President, and that he, said A. H. Calef is, and at the time of the execution of the foregoing instrument was, the Secretary, of St. Louis, Iron Mountain and Southern Railway Company, the corporation grantor in the foregoing instrument; that such instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors; that he, George J.

Gould, and he, A. H. Calef, knows the corporate seal of the said company; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and
399 that it was so affixed by order of the Board of Directors of the said company, and that the said George J. Gould signed the name of said corporation and his own name thereto as President, and the said A. H. Calef signed his name thereto as Secretary, by the order of said Board of Directors; and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said George J. Gould and the said A. H. Calef acknowledged said instrument to be the free act and deed of said corporation.

In witness whereof, I have hereunto set my hand and seals of office as Commissioner of Deeds in the State of New York for the several States of Illinois, Missouri, Arkansas and Louisiana, and also as Notary Public in and for the County of New York, in the State of New York, at my office in said City of New York this first day of May, 1903.

CHARLES EDGAR MILLS,
[Seal] Commissioner for the State of Illinois.
CHARLES EDGAR MILLS,
[Seal] Commissioner for the State of Missouri.
CHARLES EDGAR MILLS,
[Seal] Commissioner for the State of Arkansas.
CHARLES EDGAR MILLS,
[Seal] Commissioner for the State of Louisiana.
CHARLES EDGAR MILLS,
[Seal] Notary Public,
New York State and County.

Commission will expire March 30th, 1905.

400 STATE OF NEW YORK,
County of New York—ss.:

I, CHARLES EDGAR MILLS, residing in the County and State of New York aforesaid, a Commissioner of Deeds in the State of New York for the States of Illinois, Missouri, Arkansas and Louisiana respectively, duly appointed, qualified and commissioned by the Governors of said States respectively, and a Notary Public in and for the County of New York, duly appointed and qualified and commissioned, do hereby

certify that on the first day of May, 1903, before me personally appeared Alvin W. Krech, the Vice-President, and J. D. Ostrander, the Assistant Secretary, of The Mercantile Trust Company, one of the Parties of the second part and one of the grantees in the foregoing instrument or mortgage deed, with whom I am personally acquainted, and who are personally known to me and known to me to be such Vice-President and Assistant Secretary respectively, and personally known to me to be the same persons whose names are signed to the foregoing instrument or mortgage deed as such Vice-President and Assistant Secretary respectively, and they, for themselves and on behalf of said The Mercantile Trust Company, on this day severally acknowledged to me that said The Mercantile Trust Company had executed the foregoing instrument or mortgage deed, and that they had executed the same as their own free and voluntary act and deed, and as the free and voluntary act and deed of the said company, for the consideration and purposes therein mentioned and set forth.

And the said Alvin W. Krech and J. D. Ostrander, being by me severally duly sworn, did severally depose and say that he, said Alvin W. Krech is, and at the time of the execution of the foregoing instrument was the Vice-President, and that he, said J. D. Ostrander is, and at the time of the execution of the foregoing instrument was the Assistant Secretary of The Mercantile Trust Company, the corporation grantee in the foregoing instrument; that such instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors; that he, Alvin W. Krech, and he, J. D. Ostrander, knows the corporate seal of the said company; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that it was so affixed by order of the Board of Directors of the said corporation, and that the said Alvin W. Krech signed the name of said corporation and his own name thereto as Vice-President, and the said J. D. Ostrander signed his name thereto as Assistant Secretary, by like order of said Board of Directors; and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said Alvin W. Krech and the said J. D. Ostrander acknowledged said instrument to be the free act and deed of said corporation.

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In witness whereof, I have hereunto set my hand and seals of office as Commissioner of Deeds in the State of New York for the several States of Illinois, Missouri,

Arkansas and Louisiana, and also as Notary Public in and for the County of New York, in the State of New York, at my office in said City of New York, this first day of May, 1903.

CHARLES EDGAR MILLS,
[Seal] Commissioner for the State of Illinois.
CHARLES EDGAR MILLS,
[Seal] Commissioner for the State of Missouri.
CHARLES EDGAR MILLS,
[Seal] Commissioner for the State of Arkansas.
CHARLES EDGAR MILLS,
[Seal] Commissioner for the State of Louisiana.
CHARLES EDGAR MILLS,
[Seal] Notary Public,
New York State and County.

Commission will expire March 30th, 1905.

402 STATE OF NEW YORK,
County of New York—ss.:

I, CHARLES EDGAR MILLS, residing in the City and State aforesaid, a Commissioner of Deeds in the State of New York for the States of Illinois, Missouri, Arkansas and Louisiana, duly appointed, qualified and commissioned by the Governors of said States respectively, and a Notary Public in and for the County of New York, duly appointed and qualified commissioned, do hereby certify that on the first day of May, 1903, before me personally appeared William K. Bixby, one of the parties of the second part, and one of the grantees in the foregoing instrument or mortgage deed, with whom I am personally acquainted, and who is personally known to me, and personally known to me to be the same person whose name is signed to the foregoing instrument or mortgage deed as trustee, and he on this day acknowledged to me that he had executed the foregoing instrument or mortgage deed as trustee, and that he had executed the same as his own free and voluntary act and deed as trustee for the consideration and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and seals of office as Commissioner of Deeds in the State of New York for the States of Illinois, Missouri, Arkansas and Louisiana, and also as Notary Public in and for the County of New York, in the State of New York,

at my office in said City of New York, this first day of May, 1903.

CHARLES EDGAR MILLS,

[Seal] Commissioner for the State of Illinois.

CHARLES EDGAR MILLS,

[Seal] Commissioner for the State of Arkansas.

CHARLES EDGAR MILLS.

[Seal] Commissioner for the State of Louisiana.

CHARLES EDGAR MILLS,

[Seal] Commissioner for the State of Missouri.

CHARLES EDGAR MILLS,

[Seal] Notary Public,
New York State and County.

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UNITED STATES OF AMERICA

St. Louis Iron Mountain and Southern Railway Company

No. 32898

FIRST MORTGAGE

UNITED STATES OF AMERICA

St. Louis, Iron Mountain and Southern Railway Company

No. 32898

FIRST MORTGAGE
FOUR PER CENT THIRTY-YEAR
GOLD BOND

The St. Louis Iron Mountain and Southern Railway Company
The undersigned the Railway Company for value received promises to pay on the first day of May one
thousand nine hundred and thirty three at its office or agency in the City of New York to the bearer of this bond or
registered thereto the registered holder hereof One Thousand Dollars gold coin of the United States of the present
standard of weight and fineness and to pay interest thereon from May 1st 1903 until the payment of this bond
at the rate of four per cent per annum such interest being payable at said office or agency in like gold coin semi-
annually on the first days of May and November in each year but only upon surrender for cancellation of the
respective coupons for such interest hereto annexed. Both the principal and interest of this bond are payable without
deduction for any tax or taxes which the Railway Company may be required to pay thereon or to retain therefrom
under any present or future law of the United States or of any State County or Municipality therein.
This bond is one of a series of coupon and registered bonds of the Railway Company known as St. Louis Iron
Mountain and Southern Railway Company River and Gulf Divisions First Mortgage Four Per Cent Thirty-
Year Gold Bonds duly authorized and approved by the Board of Directors and by the stockholders of the Railway
Company to the amount limited by law and by the Mortgage hereinafter mentioned to be issued and secured by a
mortgage to secure the payment of the principal sum of Twenty Million Dollars at any one
time outstanding all of which bonds are issued and to be issued under and in pursuance of and are equally
secured by a mortgage or deed of trust dated May 1st 1903 executed by the Railway Company to the Mercantile
Trust Company a corporation of the State of New York and William K. Bixby of St. Louis and residents of the City of
St. Louis State of Missouri as trustees of all the property and franchises described in said mortgage or deed of
trust to which reference is hereby made for a description of the property and franchises mortgaged or pledged the
nature and extent of the security the rights of the holders of said bonds as to the same and the terms and conditions
under which said bonds are issued and secured and agreed to be issued. If default shall be made in the payment of any
semi-annual installment of interest on this bond or if the same shall become due and be demanded and such
installment shall remain unpaid for six months after such demand the principal of this bond may become due
and payable in the manner provided in said mortgage or deed of trust. This bond shall pass by delivery unless
registered in the name of the owner on the books of the Railway Company at its office or agency in the City of New
York such registration being noted on the bond by the Railway Company. After such registration no transfer
shall be valid unless made on said books by the registered holder in person or by attorney duly authorized and
similarly noted on the bond but the same may be discharged from registration by being transferred to bearer and
thereupon transferability by delivery shall be restored but this bond may again from time to time be registered or
transferred to bearer as before. Such registration however shall not affect the negotiability of the coupons which

RIVER AND GULF DIVISIONS

RAILWAY COMPANY

FIRST MORTGAGE
FOUR PER CENT THIRTY-YEAR
GOLD BOND

St Louis Iron Mountain and Southern Railway Company

The undersigned, formed the Railway Company, for value received, promises to pay on the first day of May one thousand nine hundred and thirty three at its office or agency in the City of New York, to the bearer of this bond or, if registered, then to the registered holder hereof, One Thousand Dollars gold coin of the United States of the present standard of weight and fineness, and to pay interest thereon from May 1st 1883, until the payment of this bond, at the rate of four per cent per annum, such interest being payable at said office or agency in like gold coin, semi-annually on the first days of May and November, in each year, but only upon surrender for cancellation of the respective coupons for such interest hereto annexed. Both the principal and interest of this bond are payable without deduction for any taxes or charges or duties now or hereafter imposed by the Government of the United States or by any State or Municipality within the Railway Company may be required to retain therefrom under any present or future laws of the United States or of any State, County or Municipality within the same. This bond is one of a series of coupon and registered bonds of the Railway Company known as St Louis Iron Mountain and Southern Railway Company, Missouri, River and Gulf Divisions, First Mortgage, Four Per Cent, Thirty Years, Gold Bonds, duly authorized and approved by the Board of Directors and by the Stockholders of the Railway Company, to the amount limited and secured by a mortgage or deed of trust, dated May 1st 1883, executed by the Railway Company to the Mercantile Trust Company, a corporation of the State of New York, and William K. Bixby, of St Louis and residents of the City of St Louis, Trustees, as security for the payment of the principal and interest of all the bonds issued and to be issued under and in pursuance of said mortgage or deed of trust, equally and ratably without preference or priority of any one bond over any other by reason of priority in the issue or negotiation thereof or otherwise, and conveying to the said Trustees all of the railroads, franchises and property of the Railway Company, now owned or hereafter acquired, described in said mortgage or deed of trust, to which reference is hereby made for a description of the property and franchises mortgaged or pledged, the nature and extent of the security, the rights of the holders of said bonds under the same and the terms and conditions upon which said bonds are issued and secured and agreed to be paid. Default shall be made in the payment of any coupon hereby secured when the same shall become due and payable, and such default shall continue for six months after such demand, the principal of this bond may become due and payable in the manner provided in said mortgage or deed of trust. This bond shall pass by delivery unless registered in the name of the owner on the books of the Railway Company at its office or agency in the City of New York, such registration being noted on the bond by the Railway Company. After such registration no transfer shall be valid unless made on said books by the registered holder in person or by attorney duly authorized and similarly noted on the bond, but the same may be discharged from registration by being transferred to bearer, and the coupons transferability by delivery shall be restored, but this bond may again from time to time be registered or transferred to bearer as before. Such registration however shall not affect the negotiability of the coupons which shall continue to be transferable by delivery. The holder of this bond may at his option surrender the same for cancellation with all unmatured coupons thereto attached or appertaining in exchange for a registered bond without coupons as provided in said mortgage or deed of trust. No recourse in any event shall be had for the payment of the principal or interest of this bond against any stockholder, director or officer of the Railway Company. This bond shall not be valid unless authenticated by the certificate endorsed hereon executed by the Mercantile Trust Company or its successor as one of the Trustees under said mortgage or deed of trust.

In Witness Whereof, St Louis Iron Mountain and Southern Railway Company has caused these presents to be signed by its President or one of its Vice Presidents and its corporate seal affixed by the Secretary or one of its Assistant Secretaries to be hereto affixed as of the first day of May A.D. 1883 and the annexed interest coupons to be executed with the engraved signatures of its Treasurer.

St Louis Iron Mountain and Southern Railway Company.

by

J B Kennard

President

Attest

Secretary

413 (Clerk's Certificate to Transcript.)

United States of America,
Eastern Division of the Eastern
Judicial District of Missouri.—ss:

I, Jas. J. O'Connor, Clerk of the District Court of the United States within and for the Eastern Division of the Eastern Judicial District of Missouri Do Hereby Certify the above and foregoing to be a full, true and complete transcript (except insofar as the same is restricted by the praecipes for transcript heretofore set out) of the record and proceedings in cause No. 6935, In the Matter of Missouri Pacific Railroad Company, Debtor, upon the appeal of Bankers Trust Company and William H. Bixby, Trustees of the St. Louis, Iron Mountain & Southern Railway Company River & Gulf Division First Mortgage, from the Decree entered July 6, 1934, as fully as the same remains on file and of record in my office.

Seal
U. S. Dist. Court
East. Div. of the
East. Jud. Dist. of
Missouri

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at office in the City of St. Louis, in said Division of said District, this 26th day of September, in the year of our Lord, Nineteen Hundred and Thirty-four.

JAS. J. O'CONNOR,
Clerk of said Court.
By J. R. O'Connor,
Deputy.

Filed Sep. 26, 1934. E. E. Koch, Clerk.

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414 (Notice of Appeal to be presented to U. S. Circuit Court of Appeals and Acknowledgment of Service.)

In the United States Circuit Court of Appeals for the Eighth Circuit.

In the Matter of

Missouri Pacific Railroad Company, Debtor.

In Proceedings for the Reorganization of a Railroad.

To:

Reconstruction Finance Corporation, a corporation, or Stanley Reed, C. M. Clay and Max O. Truitt, Its Attorneys of Record.

United States of America, or Angus D. MacLean and Harry C. Blanton, Its Attorneys of Record.

Guaranty Trust Company of New York and Benjamin F. Edwards, Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company, or Davis, Polk, Wardwell, Gardiner & Reed and Nagel, Kirby, Orrick & Shepley, Their Attorneys.

L. W. Baldwin and Guy A. Thompson, Trustees in Reorganization of the Missouri Pacific Railroad Company, or Edward J. White, Their Attorneys.

Sirs:—

Please Take Notice that the undersigned Bankers Trust Company, a corporation, and William H. Bixby, as trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, hereby appeal from the order and decree of the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri entered on the 6th day of July, 1934, and entitled "On petitions of Trustees of debtor and others, to construe the Gold Clause in bonds pleaded by Bankers Trust Company, Special Intervener, under St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions, First Mortgage" to the Circuit Court of Appeals for the Eighth Circuit, and you are hereby further notified that the undersigned will on the 30th day of July, 1934,
415 or as soon thereafter as counsel may be heard, present to the Circuit Court of Appeals for the Eighth Circuit of the United States of America, sitting at St. Paul, Minnesota, their petition for leave to appeal from the decree aforesaid.

Dated at St. Louis, Missouri, July 26, 1934.

BANKERS TRUST COMPANY and
WILLIAM H. BIXBY, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Division First Mortgage Due May 1, 1933,

By Alexander & Green,
Fordyce, White, Mayne & Williams,
Attorneys for Bankers Trust Company and William H. Bixby as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions, First Mortgage Due May 1, 1933.

July 27, 1934.

The undersigned acknowledge receipt of a copy of the attached Notice of Appeal and hereby consent to the presentation of the aforementioned petition for appeal to the Circuit Court of Appeals for the Eighth Circuit, on July 30, 1934, or as soon thereafter as counsel may be heard.

RECONSTRUCTION FINANCE
CORPORATION, a corporation,
By Stanley Reed, Gen. Counsel,
C. M. Clay, & Max O'Rell Truitt Counsel
Attorneys for the Reconstruction
Finance Corporation.

UNITED STATES OF AMERICA,
By Angus D. MacLean and
Harry C. Blanton,
Attorneys for United States of
America.

416 GUARANTY TRUST COMPANY OF
NEW YORK and BENJAMIN F.
EDWARDS, Trustees under the First
and Refunding Mortgage of the Missouri
Pacific Railroad Company.
By Davis, Polk, Wardwell, Gardiner & Reed,
Nagel, Kirby, Orrick & Shepley,
Attorneys for Guaranty Trust
Company of New York and Benjamin F. Edwards, Trustees under
the First and Refunding Mortgage
of the Missouri Pacific Railroad
Company.

L. W. BALDWIN and
GUY A. THOMPSON, Trustees in Reorganization of the Missouri Pacific Railroad Company,
By Edw. J. White,
Attorney for L. W. Baldwin and
Guy A. Thompson, Trustees in Reorganization of the Missouri Pacific Railroad Co.

(Endorsed): Notice of Appeal. Filed in U. S. Circuit Court of Appeals on July 30, 1934, E. E. Koch, Clerk.

418 (Petition for Appeal to be Presented to U. S. Circuit Court of Appeals.)

In the United States Circuit Court of Appeals for the Eighth Circuit

In the Matter of

Missouri Pacific Railroad Company, Debtor.

In Proceedings for the Reorganization of a Railroad.

To the Honorable Judges of the Circuit Court of Appeals for the Eighth Circuit:

Your petitioners, Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, deeming themselves aggrieved by the decree of the United States District Court for the Eastern Judicial District of Missouri, Eastern Division, made and entered in the above-entitled cause by the Honorable Charles B. Faris, one of the Judges thereof, on the 6th day of July, 1934, entitled "On Petitions of Trustees of Debtor and Others, to Construe the Gold Clause in Bonds Pleaded by Bankers Trust Company, Special Intervener, Under St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage", respectfully petition your Honors for leave to appeal from said decree.

In support of this petition your petitioners respectfully represent that on the 31st day of March, 1933, the above Debtor filed its petition under Section 77 of the Bankruptcy Act, and on said day the Court approved said petition as duly filed. Your petitioners are Trustees of the St.
419 Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, which is a valid and subsisting first lien on property now owned by the Debtor, and under which Mortgage bonds of a nominal amount of $34,548,000, payable in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903, are now outstanding. On December 27, 1933, your petitioners filed their petition, dated December 4, 1933, for leave to intervene in said proceeding, and for other relief. Said petition contained the following allegation:

"VII. That bonds validly issued under and secured by the Mortgage in the sum of thirty-four million five hundred forty-eight thousand dollars ($34,548,000) are now outstand-

ing. Each of said bonds and the Mortgage provides that principal and interest is payable in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903."

It also contained the following prayers for relief:

"4. That the lien of the Mortgage be determined to be in the sum of Thirty-four million five hundred and forty-eight thousand dollars ($34,548,000), with interest thereon from May 1, 1933, at the rate of six per cent per annum, less such amounts as shall have been accepted by holders of the Bonds on account of interest since May 1, 1933; that such sum and interest be determined to be payable in gold coin of the United States of the standard and weight and fineness prevailing on May 1, 1903, or, in the alternative, that any determination with respect to the right of the Trustees to payment in such gold coin be reserved without prejudice to any rights which the Trustees may have to payment in such gold coin on a final determination herein; that the determination of the amount of the lien of the mortgage be incorporated in a formal judgment or decree of this Court substantially equivalent to a judgment in an action to foreclose the Mortgage; and that the amount specified in such judgment or decree be determined to bear interest at the rate of six per cent per annum;

"5. That the Court determine that any and all sums paid over to your petitioners as Trustees on account of the rents, issues, profits, tolls and other income of the property subject to the lien of the Mortgage may be applied, after deduction by your petitioners as Trustees of their expenses
420 and of just and reasonable compensation for your petitioners and for the service of all counsel, agents, and employees properly engaged and employed by them, first on account of interest accruing from time to time on the amount to be specified in the judgment or decree hereinabove prayed for, any balance remaining to be applied on account of so much of said judgment as may represent interest on the Mortgage or the Bonds, and any further balance remaining to be applied on account of so much of said judgment as may represent the principal of the Mortgage or the Bonds; and that the Court determine that any such sums of money so paid to your petitioners as Trustees otherwise than in gold coin on account of any obligation payable in gold coin may be accepted by such Trustees at the market

value of such sums of money in such gold coin at the times of such payments;"

Thereafter, and on or about April 5, 1934, an order was entered permitting a special intervention by your petitioners.

On April 10, 1934, an answer was interposed by the Trustees of the Debtor which contained the following allegation:

"VII.

"With respect to the prayer of said intervening petition that the sum secured by said mortgage with interest thereon be determined to be payable in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903, as provided in said mortgage and in the bonds secured thereby, Trustees aver that said provisions of said mortgage and said bonds are void and of no effect for the reason that the Congress of the United States, under Joint Resolution of the House and Senate of the United States, adopted June 5, 1933, provided that promises to pay dollars in gold coin could be satisfied by the payment of dollars in any other form, and said Joint Resolution set aside and rendered nugatory said provisions of said Mortgage and bonds, and, to enforce said provisions against the Debtor or Trustees in this proceeding would result in increasing the amount due upon the principal of said bonds over the legal amount which the holders of said bonds are entitled to recover.

"Trustees further aver that, in order to prevent delay, in the presentation to, and promulgation by, the Interstate Commerce Commission of a plan for the reorganization of the capital structure of the Debtor in this proceeding, the Court should speedily pass upon said issue and, further, Trustees state that, by reason of the provisions of the Federal Equity Rule No. 29, said issue of law raised by the interveners in this case, going to the whole or a material part of the cause of action stated in the intervening petition, may be called up and disposed of before final hearing at the discretion of the Court, and said issue should be speedily decided by the Court so that the reorganization of the Debtor's corporate structure shall not be unnecessarily delayed."

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Said answer also contained the following prayer for relief:

"Wherefore, Trustees pray that said issue shall be passed upon without delay by the Court and that the Court

shall order and decree that, under and by virtue of said Joint Resolution of the Congress of the United States of June 5, 1933, the so-called Gold Clause of said Mortgage, set up in said intervening petition by said Trustees, shall be adjudged null and void."

On April 9, 1934, an answer to said petition was filed by the Reconstruction Finance Corporation, an intervener, containing the following allegations:

"8. It alleges that the 73rd Congress, among other measures dealing with the emergency then and now existing, adopted Public Resolution No. 10 (a joint resolution to secure uniform value to the coins and currencies of the United States) as follows:

'Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

'Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts, Now, therefore, be it

'Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States
422 measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

'(b) As used in this resolution, the term "obligation" means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term "coin or currency" means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve Banks and national banking associations.

'Sec. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes", approved May 12, 1933, is amended to read as follows:

" 'All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight. ' "

that said resolution, which was approved June 5, 1933, is in full force and effect, and it not only prohibits payment of the sums secured by the aforesaid mortgage in gold coin or in other than lawful money of the United States but expressly declares to be against public policy the clause or provision relied upon by the Trustees of the aforesaid mortgage as authorizing and requiring payment 'in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903'.

423 "9. It alleges that the 73d Congress, among other measures dealing with the emergency then and now existing, enacted Public Act No. 1, which was approved March 9, 1933, and, except as may be amended by the Act of Congress referred to in paragraph '10' hereof, is in full force and effect; that said Act authorized the President of the United States to regulate and prohibit, among other things, transactions in foreign exchange, transfers of credit between or payments by banking institutions as defined by the President, and the export, hoarding, melting or earmarking of gold or silver coin or bullion or currency, and

confirmed such actions theretofore taken by the President; and authorized the Secretary of the Treasury to require any or all persons to deliver to the Treasurer of the United States any or all gold coin, gold bullion and gold certificates owned by such persons; that consonant with and pursuant to said Act orders were issued by the President on March 6, March 10, April 5, April 20, August 28, August 29, October 25, 1933, and January 12, 1934, and by the Secretary of the Treasury on December 28, 1933, January 11 and January 15, 1934, regulating and prohibiting the ownership, export, hoarding, melting or earmarking of gold coin or bullion or currency; that such orders prevent, and were intended to prevent, the payment of the sums secured by the aforesaid mortgage 'in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903'.

"10. It alleges that the 73rd Congress enacted the Gold Reserve Act of 1934, which was approved January 30, 1934, and is in full force and effect; that said Act prohibits the coinage of gold and the payment or delivery of gold coin by the United States, and requires that all gold coin of the United States be withdrawn from circulation; that said Act requires the Secretary of the Treasury, with the approval of the President, to prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked; that pursuant to said Act, the Secretary of the Treasury, with the approval of the President, on January 30 and 31, 1934, issued provisional regulations prescribing the conditions under which such acquisition and disposition of gold might be effected; that said Act and said regulations prohibit payment of the sums secured by the aforesaid mortgage 'in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903'.

"11. In order to effect an orderly preparation and consummation of a plan of reorganization for the debtor under Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, which is the primary purpose of said Section 77, under which these proceedings are now
424 pending, it is necessary that the court determine without delay whether or not the debt alleged to be owing on account of the principal of the bonds and the interest now or hereafter due, secured by the aforesaid mortgage and on account of the expenses of the Trustees and of the compensation of the aforesaid petitioner and for the services of all counsel, agents and employees properly en-

gaged and employed by them, may be satisfied by the payment of the face amount of said debt in lawful money of the United States, since until this determination is made, the nature and extent of the claims and interests of the various creditors cannot be definitely ascertained."

Said answer also contained the following prayer for relief:

"2. That the Court determine without delay that the debt alleged to be owing on account of the principal of the bonds and the interest now or hereafter due, secured by the aforesaid mortgage and on account of the expenses of the Trustees and of the compensation of the aforesaid petitioner and for the services of all counsel, agents and employees properly engaged and employed by them, may be satisfied by the payment of the face amount of said debt in lawful money of the United States."

On April 28, 1934, an answer was filed by the United States of America, a special intervener, containing allegations and a prayer for relief substantially the same as those to be found in the answer of the Reconstruction Finance Corporation.

On May 16, 1934, an answer was filed on behalf of Guaranty Trust Company and Benjamin F. Edwards, as Trustees of the First and Refunding Mortgage of the Missouri Pacific Railroad Company, containing the following prayer for relief:

"(5) With respect to prayer No. 4 of the petition, the First and Refunding Mortgage Trustees allege that it is neither necessary nor important to the progress of these proceedings that there be a decision at this time upon the rights of the petitioners or the bondholders whom they represent to have such obligations as may be found owing to them paid in gold coin of the standard described in the petition, and the First and Refunding Mortgage Trustees join in the alternative of petitioners' prayer and request that any determination with respect to the right of the petitioners to payment in such gold coin be reserved without prejudice to the rights of any party; the First and Refunding
425 Mortgage Trustees further deny that petitioners are entitled to a formal judgment or decree of this Court substantially equivalent to an action to foreclose the Mortgage, or that the amount specified in such judgment or decree be determined to bear interest at the rate of six per cent. per annum, the First and Refunding Mortgage Trustees alleging that the petitioners, if entitled to any judgment for a specific sum, are not entitled to interest on any amount

specified in such judgment at a greater rate than four per cent. per annum."

Upon the joint motion of the Trustees of the Missouri Pacific Railroad Company, Reconstruction Finance Corporation, and United States of America, based on the respective prayers for relief to be found in their several answers, and after the taking of evidence and the consideration of arguments and briefs, the District Court made its findings and decree, a certified copy of which is hereto annexed marked Exhibit A.

As appears from said decree, and from the assignment of errors, the decree of the Court below presents important questions as to the construction of the so-called gold clauses in the Mortgage and Bonds, as to the construction and effect of Public Resolution No. 10, 73d Congress, approved June 5, 1933, and other Acts of Congress, and as to the constitutionality of said Public Resolution No. 10 and other Acts of Congress bearing directly or indirectly on the right of your petitioners to payment in gold coin of the standard of weight and fineness prevailing on May 1, 1903, or the equivalent thereof.

Your petitioners refer to the assignment of errors filed by them simultaneously with this petition, setting forth the errors made by the Court below and giving the grounds for this appeal, and make said assignment of errors a part hereof.

426 Wherefore, your petitioners pray that they may be allowed in the discretion of this Honorable Court to appeal in matter of law herein, that the prayer of said petition be granted and a citation be issued directed to the Debtor; to L. W. Baldwin and Guy A. Thompson, as Trustees of the Debtor; to Reconstruction Finance Corporation, intervener; to United States of America, intervener; and to Guaranty Trust Company and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company, interveners; commanding them to appear before the United States Circuit Court of Appeals for the Eighth Circuit, to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record and proceedings in said proceeding, duly authenticated, may be transmitted to the United States Circuit Court of Appeals for the Eighth Circuit.

And your petitioners pray that the Court fix the amount of the bond which your petitioners shall give on said appeal.

BANKERS TRUST COMPANY and
WILLIAM H. BIXBY,
As Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933,
By Alexander & Green,
Attorneys for Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, and

JAMES H. McINTOSH,
EDWARD W. BOURNE,
THOMAS W. WHITE,
Attorneys for Trustees.

July 25, 1934.

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427 Exhibit A.

In the District Court of the United States Within and for the Eastern Division, Eastern Judicial District of Missouri.

In the Matter of Missouri Pacific Railroad Company, Debtor.

In Proceedings for the Reorganization of a Railroad No. 6935.

Decree on Petitions of Trustees of Debtor and Others, to Construe the Gold Clause in Bonds Pleaded by Bankers Trust Company, Special Intervener, Under St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage.

The above cause having come on to be heard, on the twenty-fifth day of May, A. D. 1934, upon the petition of Bankers Trust Company of New York and W. K. Bixby, Trustees of the St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage, interveners, and upon the answer of the Trustees of the
427a Debtor, Missouri Pacific Railroad Company, and the answers of the Reconstruction Finance Corporation and United States of America, interveners, praying for af-

firmative relief therein, involving and concerning the validity of the so-called "gold clauses," hereinafter described, contained in the St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage, dated May 1, 1903, and the bonds issued thereunder, and praying for a decree that the amount due under the St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage, dated May 1, 1903, and the bonds issued thereunder, is the principal amount named in the bonds validly issued and outstanding thereunder, with interest thereon, all payable in such money of the United States as is legal tender for the payment of debts, notwithstanding the so-called "gold clauses" contained in said mortgage and bonds,

and

upon the issues presented by the said petition and the said answers, praying for affirmative relief therein, involving and concerning the validity of the so-called "gold clauses" hereinafter described contained in said mortgage and said bonds,

and

counsel for Bankers Trust Company and W. K. Bixby, as Trustees of said St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage, dated May 1, 1903, having contended that Joint Resolution No. 10 of Congress, of June 5, 1933, is in contravention of the Constitution of the United States and beyond the
428 powers of Congress as applied to the so-called "gold clauses" of said mortgage and said bonds, and having contended that Congress has no power to violate or impair the obligation of said mortgage and bonds for payment in gold coin of the United States of the standard of weight and fineness existing on May 1, 1903, or its equivalent, and the Court having considered the evidence and the arguments and briefs of counsel, and being fully advised in the premises, doth make the following Findings:

(1). That it is provided in the said Mortgage and in each of the said Mortgage Bonds by the so-called "gold clauses," hereinbefore mentioned, that the principal of and the interest on the indebtedness represented thereby is payable in gold coin of the United States of the standard of weight and fineness existing on May 1, 1903.

(2) That the interveners, Bankers Trust Company and W. K. Bixby, as Trustees under the said mortgage, claim that there have been heretofore validly issued and are now outstanding under and secured by said mortgage bonds pro-

viding for the payment of $34,548,000, principal amount, in gold coin of the United States of the standard of weight and fineness existing on May 1, 1903, and interest thereon payable in like gold coin.

(3). That the said gold clauses contained in the said Mortgage and Bonds, as hereinbefore set out, are void and cannot legally be enforced by valid judgment at law, and if enforceable in equity, then only to the extent that interveners, as Trustees, are entitled to recover on each $1,000 (principal amount) bond in controversy the sum of $1,000 and
428a the interest due thereon, in such money of the United States as is legal tender for the payment of debts.

(4). That payment of the amount of the principal and interest due upon said bonds, in such money of the United States as is legal tender for the payment of debts, will discharge, dollar for dollar, the face amount of such indebtedness on account of the principal and interest due on said bonds.

(5). That Public Resolution No. 10, 73d Congress, approved June 5, 1933, is constitutional and valid, and by virtue thereof payment of the principal of and interest on said Mortgage Bonds in any gold coin of the United States, or in an amount of money equivalent to the value of gold coin, is against public policy.

(6). That payment in gold, or in gold coin, is and has been since May 1, 1933, the date of the maturity of said Mortgage Bonds, impossible in fact and in law.

(7). That payment in lawful money of the United States in an amount equivalent to the value of gold coin would seriously interfere with the reorganization of the Debtor Railroad.

(8). That the pendency, undisposed of, of the question thus presented interposes a serious obstacle to the continued orderly administration of the affairs of the Debtor Railroad and impedes, delays, hinders and obstructs the reorganization of said Railroad.

Wherefore, It Is by the Court, this 6th day of July, A. D. 1934,

Ordered, Adjudged and Decreed that the said Trustees
429 and the said bondholders are entitled to payment of $1,000 upon each said bond in the principal amount of $1,000, validly issued and outstanding, in such lawful money of the United States as is legal tender for the payment of

debts, with interest thereon, also in such lawful money of the United States; and that such payment shall extinguish the total amount of both principal and interest due upon the said bonds.

Further Ordered, Adjudged and Decreed that any and all amounts payable to the said Mortgage Trustees shall be paid to said Trustees in any lawful money of the United States which is legal tender for debts; and that the money so paid shall be accepted by said Trustees at the nominal value thereof and in discharge, dollar for dollar, of the face amount of the indebtedness, including interest, to which it may be applied.

And It Is Further Ordered, Adjudged and Decreed that the claims of the said Trustees and the said bondholders for payment in gold or its equivalent and for payment in excess of that herein decreed is denied and rejected.

C. B. FARIS,
United States District Judge.

Filed Jul 6, 1934. Jas. J. O'Connor, Clerk.

430 UNITED STATES OF AMERICA,
EASTERN DISTRICT OF MISSOURI.—ss:

I, JAS. J. O'CONNOR, Clerk of the United States District Court in and for the Eastern District of Missouri, do hereby certify that the annexed and foregoing is a true and full copy of the original order on petitions of Trustees of Debtor and Others, to construe the Gold Clause in Bonds Pleaded by Bankers Trust Company, Special Intervener, Under St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage, filed July 6, 1934, in cause No. 6935 Bkptcy, In the Matter of Missouri Pacific Railroad Company, Debtor.

now remaining among the records of the said Court in my office.

Seal
U. S. Dist. Court
East. Div. of the
East. Jud. Dist. of
Missouri.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at St. Louis, Mo., this 24th day of July, A. D. 1934.

JAS. J. O'CONNOR,
Clerk.
By J. R. O'Connor,
Deputy Clerk.

(Endorsed): Petition for allowance of Appeal. Filed in U. S. Circuit Court of Appeals on July 30, 1934, E. E. Koch, Clerk.

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433 (Assignment of Errors on Appeal allowed by U. S. Circuit Court of Appeals.)

In the United States Circuit Court of Appeals for the Eighth Circuit.

In the Matter of

Missouri Pacific Railroad Company, Debtor.

In Proceedings for the Reorganization of a Railroad.

Come now Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, having made their petition for the allowance of an appeal herein from the order entered in the United States District Court for the Eastern Judicial District of Missouri, Eastern Division, on July 6, 1934, entitled "On Petitions of Trustees of Debtor and Others, to Construe the Gold Clause in Bonds Pleaded by Bankers Trust Company, Special Intervener, Under St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage", and file the following assignment of errors, upon which they will rely upon the prosecution of their appeal:

1. The Court erred in making its Finding No. (3).

2. The Court erred in making its Finding No. (4).

3. The Court erred in making its Finding No. (5).

4. The Court erred in making its Finding No. (6).

5. The Court erred in making its Finding No. (7).

6. The Court erred in making its Finding No. (8).

434 7. The Court erred in failing to hold that the so-called "gold clauses" in the Mortgage and Bonds referred to in said decree were intended to and do entitle the obligees to gold coin of the United States of the standard of weight and fineness on May 1, 1903, or to the equivalent thereof if such equivalent could be determined.

8. The Court erred in failing to hold that the equivalent of $1,000 in gold coin of the United States of the standard of weight and fineness of May 1, 1903, could be determined, and was at the time of said decree and still is the number of

dollars then and now current obtained by multiplying 1,000 by 25.8 and dividing the same by 15-5/21.

9. The Court erred in failing to hold that the lien of the Mortgage and the amount due on the Bonds issued thereunder could not be discharged except by the payment of the amount of such lien or otherwise pursuant to law.

10. The Court erred in holding that Congress had the power under the Constitution of the United States to enact so much of Public Resolution No. 10, approved June 5, 1933, as purports to provide that every obligation requiring payment in gold or in an amount in money of the United States measured by gold could be discharged upon payment, dollar for dollar, in any coin or currency which at the time of the payment is legal tender for public and private debts.

11. The Court erred in failing to hold that so much of Public Resolution No. 10, approved June 5, 1933, as
435 purports to provide that every obligation requiring payment in gold or in an amount in money of the United States measured by gold could be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts is in contravention of the Constitution of the United States and particularly the Fifth Amendment thereto.

12. The Court erred in holding that the Trustees and the Bondholders are entitled only to payment of $1,000 upon each Bond in the principal amount of $1,000, validly issued and outstanding, in such lawful money of the United States as is legal tender for the payment of debts, with interest thereon, also in such lawful money of the United States; and that such payment would extinguish the total amount of both principal and interest due upon said Bonds.

13. The Court erred in holding that any and all amounts payable to the said Mortgage Trustees should be paid to said Trustees in any lawful money of the United States which is legal tender for debts, and that the money so paid should be accepted by said Trustees at the nominal value thereof and in discharge, dollar for dollar, of the face amount of the indebtedness, including interest, to which it may be applied.

14. The Court erred in holding that the claims of the said Trustees and the said Bondholders for payment in
436 gold or its equivalent and for payment in excess of that provided for in said decree should be denied and rejected.

Wherefore, appellants pray that the said decree entered in the said District Court July 6, 1934, be reversed, and that such other and further relief may be given these appellants as may be just and proper.

BANKERS TRUST COMPANY and
WILLIAM H. BIXBY, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933.
By Alexander & Green,
Attorneys for Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933.

July 25, 1934.

(Endorsed): Assignment of Errors. Filed in U. S. Circuit Court of Appeals on July 30, 1934, E. E. Koch, Clerk.

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438 (Order of U. S. Circuit Court of Appeals Allowing Appeal.)

In the United States Circuit Court of Appeals for the Eighth Circuit

In the Matter of

Missouri Pacific Railroad Company, Debtor.

In Proceedings for the Reorganization of a Railroad.

The petition of Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, for leave of this Court to take an appeal from the decree entered in the United States District Court for the Eastern Judicial District of Missouri, Eastern Division, entitled "On Petitions of Trustees of Debtor and Others, to Construe the Gold Clause in Bonds Pleaded by Bankers Trust Company, Special Intervener, Under St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage", is hereby granted; and an appeal is hereby allowed to this Court from said decree upon the said Bankers Trust Company and William H. Bixby, as Trustees aforesaid, giving bond as required by law in the sum of $250.

It Is Further Ordered that the Clerk of the United States District Court for the Eastern Judicial District of Missouri, Eastern Division, prepare and certify a transcript of the record and proceedings herein, in accordance with the statutes and the rules of said District Court, and transmit the same to the United States Circuit Court of Appeals for the Eighth Circuit.

July 30, 1934.

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440 (Bond on Appeal Allowed by U. S. Circuit Court of Appeals.)

American Surety Company
of New York.

Organized in 1884.

Company's Home Office Building
100 Broadway, New York.

In the United States Circuit Court of Appeals for the Eighth Circuit.

In the Matter of

Missouri Pacific Railroad Company, Debtor.

Know All Men By These Presents, That We, Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage Bonds due May 1st, 1933, as Principals, and the American Surety Company of New York, a corporation organized and existing under the laws of the State of New York, of No. 100 William Street, Borough of Manhattan, City of New York, as Surety, are held and firmly bound unto Missouri Pacific Railroad Company, Debtor, L. W. Baldwin and Guy A. Thompson, as Trustees of the Debtor, Reconstruction Finance Corporation, Intervener, United States of America, Intervener, Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company, Interveners, (Obligees) in the full and just sum of Two Hundred Fifty and 00/100 Dollars ($250.00) to be paid to the said Obligees by said Principals, their successors or assigns, to which payment well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents. Sealed with our seals and dated the 25th day of July, 1934.

Whereas, a Decree was entered in the above entitled cause on the 6th day of July, 1934, entitled "On Petition of Trustees of Debtor and Others, to construe the Gold Clause in Bonds Pleaded by Bankers Trust Company, Special Intervener, under St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage", and

Whereas, the said Principals have prosecuted an appeal to the United States Circuit Court of Appeals for the Eighth Circuit, from the said decree entered herein.

Now, Therefore, The Condition Of This Obligation Is Such, That if the said Principals shall prosecute their appeal to effect and answer all costs if they fail to make their plea good, then this Obligation to be void, otherwise to remain in full force and effect.

BANKERS TRUST COMPANY, (L. S.)
(Seal) By Brenton Welling,
Vice President (L. S.)

Attest:

W. C. Meyers,
Assistant Secretary.

WILLIAM H. BIXBY,
By W. B. Deans, Agent (L. S.)
As Trustees aforesaid.

AMERICAN SURETY COMPANY OF NEW YORK,
(Seal) By: Leon Sekeson,
Resident Vice President.

Attest:

M. S. Godwin,
Resident Assistant Secretary.

877165D

Principal's Acknowledgment—If a Corporation

State of New York,
County of New York,
City of New York—ss.

On this 25th day of July, in the year 1934, before me personally came Brenton Welling, to me known, who, being by me duly sworn, did depose and say: that he resides in New York, New York, that he is the Vice President of Bankers Trust Company, the corporation described in and which exe-

cuted the within instrument; that he knows the al of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

THOMAS D. MUMFORD,
Notary Public, Nassau County,
Certificate Filed in New York Co. No. 955
New York County Register's No. 5-M-579
Commission Expires March 30, 1935.

Principal's Acknowledgment—If Individual or Firm

State of Missouri,
City of St. Louis—ss.

On this 26th day of July, 1934, before me personally appeared William B. Dean, to me known to be the person who executed the attached instrument on behalf of William H. Bixby, Trustee, as Agent, and who being by me duly sworn did depose and say that he was duly authorized to execute the said bond as Agent and Attorney-in-Fact for said William H. Bixby, Trustee, and did acknowledge that he executed the same as the free act and deed of said William H. Bixby, Trustee.

EDWARD N. SANDHOFER,
(Seal) Notary Public.

My commission expires April 19, 1936.

Surety Company's Acknowledgment.

State and County of New York—ss.:

On this 25th day of July, 1934, before me personally came Leon Sekeson to me known to be a Resident Vice-President of The American Surety Company of New York, the corporation described in and which executed the annexed bond of Bankers Trust Company and William H. Bixby, etc., as surety thereon, who being by me duly sworn, deposes and says, that he resides in the City of New York, and that he is a Resident Vice-President of the American Surety Company of New York, and knows the corporate seal thereof; that said Company is duly and legally incorporated under the laws of the State of New York; that said Company has complied with the provisions of the Act of Congress of August 13th, 1894, and as amended March 23, 1910, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to the annexed bond of Bankers Trust Com-

pany and William H. Bixby, etc., is the corporate seal of the American Surety Company of New York and was thereto affixed by order and authority of the Board of Trustees of said Company; and that he signed his name thereto by like order and authority as Resident Vice-President of said Company; and that he is acquainted with M. S. Godwin, and knows him to be a Resident Assistant Secretary of said Company; and that the signature of said M. S. Godwin subscribed to said bond is in the genuine handwriting of said M. S. Godwin and was thereto subscribed by order and authority of said Board of Trustees, and in the presence of said deponent; and that the assets of said Company, unincumbered and liable to execution, exceed its claims, debts and liabilities, of every nature whatsoever, by more than the sum of Five Million Dollars, ($5,000,000.00).

LEON SEKESON.

Sworn to, acknowledged and subscribed before me this 25th day of July, 1934.

R. J. McLAUGHLIN,
Notary Public, New York County No. 87,
Reg. No. 5-Mc-79
Certificate filed in Bronx Co. No. 4, Reg.
No. 18-Mc-35
Kings Co. No. 12, Reg. No. 5052
Term Expires March 30th, 1935

Copy of Extract from Record Book of the Board of Trustees.

"Resolved, That the Resident Vice-Presidents be and they hereby are, and each of them is hereby, authorized and empowered to execute and to deliver and to attach the seal of the Company to any and all obligations for or on behalf of the Company, such obligations, however, to be attested in every instance by a Resident Assistant Secretary."

State and County of New York—ss:

I, M. S. Godwin, Resident Assistant Secretary of the American Surety Company of New York, do hereby certify that I have compared the foregoing extract from the Record Book of the Board of Trustees of the American Surety Company of New York, with the original record of said Board, and that the same is a correct extract therefrom as it appears of record and is set forth and contained in said Record Book; and I further certify that said resolution has not been revoked or rescinded.

Given under my hand and the seal of the Company, at the City of New York, this 25th day of July, 1934.

M. S. GODWIN,
(Seal) Resident Assistant Secretary.

(Endorsed): Costs bond on Appeal. Filed in U. S. Circuit Court of Appeals on July 30, 1934, E. E. Koch, Clerk.

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441 (Order of U. S. Circuit Court of Appeals Approving Bond on Appeal.)

In The United States Circuit Court of Appeals for the Eighth Circuit.

In the Matter of

Missouri Pacific Railroad Company, Debtor.

In Proceedings for the Reorganization of a Railroad.

Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, appellants, having presented their appeal bond on their appeal from a decree entered in the United States District Court for the Eastern Judicial District of Missouri, Eastern Division, on the 6th day of July, 1934, it is hereby

Ordered that the said appeal bond be and the same hereby is approved.

July 30, 1934.

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443 (Citation on Appeal Allowed by U. S. Circuit Court of Appeals, and Service.)

In The United States Circuit Court of Appeals for the Eighth Circuit.

In the Matter of

Missouri Pacific Railroad Company, Debtor.

The United States of America,

To Reconstruction Finance Corporation, a corporation, United States of America, Guaranty Trust Company of New York, and Benjamin F. Edwards, Trustees under First and Refunding Mortgage of the Missouri Pacific Railroad Company, and L. W. Baldwin and Guy A. Thompson, Trustees in Reorganization for the Missouri Pacific Railroad Company,—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, in the City of St. Louis, Missouri, forty (40) days from and after the day this citation bears date, pursuant to an appeal filed in the Clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, wherein the Bankers Trust Company and William H. Bixby, Trustees of the St. Louis, Iron Mountain & Southern Railway Company River & Gulf Divisions First Mortgage, due May 1, 1933, are appellants, and you are appellees, to show cause, if any there be, why the decree of the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, construing the Gold Clause contained in the bonds pleaded by the Bankers Trust Company and W. H. Bixby and entered on July 6, 1934 as in said appeal men-
444 tioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable John B. Sanborn, Presiding Judge of the United States Circuit Court of Appeals in and for the Eighth Circuit, this 30th day of July, 1934.

JOHN B. SANBORN,
Presiding Judge, Circuit Court of Appeals for the Eighth Circuit.

Received a copy of the above Citation this 2nd day of August, 1934.

RECONSTRUCTION FINANCE CORPORATION, a corporation,
By Stanley Reed, Gen. Counsel,
C. M. Clay, Counsel,
Max O'Rell Truitt & Green,
Henry & Remmers,
Attorneys for the Reconstruction Finance Corporation.

UNITED STATES OF AMERICA,
By Harry C. Blanton,
U. S. Attorney, Eastern Dist. of Mo.
Irwin Sales, Asst. U. S. Atty.
Attorneys for United States of America.

GUARANTY TRUST COMPANY OF NEW YORK, and
BENJAMIN F. EDWARDS,
Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company.

By Nagel, Kirby, Orrick & Shepley,
Attorneys for Guaranty Trust Company of New York and Benjamin F. Edwards, Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company.

L. W. BALDWIN and
GUY A. THOMPSON,
Trustees in Reorganization of the Missouri Pacific Railroad Company.
By Edw. J. White,
Attorney for L. W. Baldwin and Guy A. Thompson, Trustees in Reorganization of the Missouri Pacific Railroad Co.

(Endorsed): Citation. Filed in U. S. Circuit Court of Appeals on August 2, 1934, E. E. Koch, Clerk.

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446 (Order of U. S. Circuit Court of Appeals Extending Time to File Transcript on Appeal Allowed by it.)

In The United States Circuit Court of Appeals for the Eighth Circuit.

Bankers Trust Company, et al., Trustees, etc., Appellants,
No. 10071. vs.
Reconstruction Finance Corporation, et al., Appellees.

Upon application, and for good cause shown, it is

Ordered that the Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, be granted further time to file Transcript; and

Ordered that the time for filing same be and is hereby extended to and including the first day of October, 1934.

September 6, 1934.

WILBUR F. BOOTH,
Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

(Endorsed): Order extending time for filing transcript. Filed in U. S. Circuit Court of Appeals on September 6, 1934, E. E. Koch, Clerk.

No. 471. October term, 1934

THE UNITED STATES OF AMERICA, RECONSTRUCTION FINANCE CORPORATION, et al., petitioners

vs.

BANKERS TRUST COMPANY AND WILLIAM H. BIXBY, TRUSTEES

Order allowing certiorari

Filed November 5, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted, and the case is assigned for argument immediately following No. 270.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 472. October term, 1934

THE UNITED STATES OF AMERICA, RECONSTRUCTION FINANCE CORPORATION, et al., petitioners

vs.

BANKERS TRUST COMPANY AND WILLIAM H. BIXBY, TRUSTEES

Order allowing certiorari

Filed November 5, 1934

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U. S. GOVERNMENT PRINTING OFFICE: 1934